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No. 38] NEW DELHI, SEPTEMBER 14—SEPTEMBER 20, 2008, SATURDAY/BHADRA 23—BHADRA 29, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 4 सितम्बर, 2008

का.आ. 2597.—केन्द्र सरकार, सार्वजनिक परिसर (अप्रधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे दी गई तालिका के कॉलम (1) में उल्लिखित अधिकारी को, सरकार के राजपत्रित अधिकारी होने के नाते, उक्त अधिनियम के प्रयोजनार्थ, एतद्वारा सम्पदा अधिकारी नियुक्त करती है जो ऊपर उल्लिखित तालिका के कॉलम (2) में विनिर्दिष्ट सार्वजनिक परिसरों से संबंधित क्षेत्राधिकार की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा अथवा इसके अंतर्गत सम्पदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेंगे और सौंपे गए कर्तव्यों का निर्वहन करेंगे, नामतः :-

तालिका

अधिकारी का पदनाम	सार्वजनिक परिसरों की श्रेणी और क्षेत्राधिकार की स्थानीय सीमा
(1)	(2)
अपर उप पुलिस महानिरीक्षक, ग्रुप केंद्र, केन्द्रीय रिजर्व पुलिस बल, गुडगाँव (हरियाणा)	हरियाणा राज्य में ग्राम कादरपुर, तहसील सोहना, जिला गुडगाँव में स्थित केन्द्रीय रिजर्व पुलिस बल के परिसर

[फा. सं. ए-II-7/2008-प्रशा.-I (जी.जी.एन.)-गृह मंत्रालय-पीएफ. (II)]
एच. काम सुआन्थान्ग, अवर सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 4th September, 2008

S.O. 2597.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Un-authorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the table below, being a gazetted officer of the Government, to be Estate Officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the Estate Officer by or under the said Act within the local limits of the jurisdiction in respect of the public premises specified in column (2) of the table aforesaid, namely :—

TABLE

Designation of the Officer	Category of public premises and local limits of jurisdiction
(1)	(2)
Additional Deputy Inspector General of Police, Group Centre, Central Reserve Police Force, Gurgaon (Haryana)	Premises belonging to the Central Reserve Police Force at Village Kadarpur, Tehsil Sohna, District Gurgaon in the State of Haryana.

[F. No. A-II-7/2008-Adm-I (GGN)-MHA-PF.III]

H. KAM SUANTHANG, Under Secy.

**कार्यिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्यिक और प्रशिक्षण विभाग)**

नई दिल्ली, 5 सितम्बर, 2008

का.आ. 2598.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अधिकारियों को विचारण न्यायालयों में दिल्ली विशेष पुलिस स्थापना (के. अ. ब्यूरो) द्वारा राजस्थान राज्य के जयपुर में संस्थित और उन्हें केंद्रीय अन्वेषण ब्यूरो द्वारा सौंपे गए मामलों के अभियोजन और विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषयों का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है:—

सर्वश्री

1. इंदर दयाल शर्मा,
2. अनंग पाल सिंह चौहान,
3. बनवारी लाल उक्खर,
4. सैयद अख्तर अली नाकवी ।

[सं. 225-20/2006-एवोडी-II]

चंद्र प्रकाश, अवर सचिव

**MINISTRY OF PERSONNEL PUBLIC GRIEVANCES
AND PENSIONS**

(Department of Personnel and Training)

New Delhi, the 5th September, 2008

S.O. 2598.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Advocates as Special Public Prosecutors for conducting prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Rajasthan at Jaipur as entrusted to them by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matter arising out of these cases in revisional or appellate court established by law.

S/Shri

1. Indra Dayal Sharma,
2. Anang Pal Singh Chauhan,
3. Banwari Lal Takhar,
4. Syed Akhtar Ali Naqvi.

[No. 225/20/2006-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 10 सितम्बर, 2008

का.आ. 2599.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अधिकारियों को झारखंड राज्य में धनबाद में विचारण न्यायालयों में दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा संस्थित और केंद्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए मामलों के अभियोजन और विधि द्वारा स्थापित

पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषयों का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है:—

सर्वश्री

1. कुंदन कुमार सिन्हा,
2. समीर सिंह चौधरी ।

[सं. 225/28/2007-एवोडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 10th September, 2008

S.O. 2599.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Advocate as Special Public Prosecutors for conducting prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Jharkhand at Dhanbad as entrusted to them by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matter arising out of these cases in revisional or appellate court established by law.

S/Shri

1. Kundan Kumar Sinha,
2. Sameer Singh Chaudhary.

[No. 225/28/2007-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 10 सितम्बर, 2008

का.आ. 2600.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय अन्वेषण ब्यूरो के अभियोजन अधिकारी श्री मुकुश कुमार मरौरिया को दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा अन्वेषण मामलों से उद्भूत अभियोजन, अपीलों, पुनरीक्षण अथवा अन्य मामलों का विधि द्वारा किसी भी राज्य या संघ प्रांतिक क्षेत्र, जिनमें उल्लेखित धारा लागू हो, में स्थापित पुनरीक्षण या अपील न्यायालय में संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है ।

[सं. 225/30/2008-एवोडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 10th September, 2008

S.O. 2600.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Mukesh Kumar Maroria Prosecuting Officer of the Central Bureau of Investigation as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment (CBI) in trial courts and appeals/revisions or other matters arising out of these cases in revisional or appellate Courts, established by law in any State or Union Territory to which provisions of the aforesaid Section apply.

[No. 225/30/2008-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2008

का.आ. 2601.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार के गृह (पुलिस) विभाग की अधिसूचना सं. 1/सोबीआई-80-20/2006-एच (पी) 14064 दिनांक 23-12-2006 द्वारा प्राप्त बिहार राज्य की सहमति से अवर सचिव, विदेशी अभिदाय (विनियमन), नई दिल्ली द्वारा तौहिद एजुकेशन ट्रस्ट, किशनगंज, बिहार के विरुद्ध दर्ज शिकायत के संदर्भ में विदेशी अभिदाय (विनियमन), के अधिनियम-1976 (1976 का केंद्रीय अधिनियम 49) के उपबंधों के अधीन दंडनीय अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण बिहार राज्य पर करती है।

[सं. 228/16/2007-एवीडी-11]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 12th September, 2008

S.O. 2601.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Bihar Home (Police) Department vide Notification 1/CBI-80-20/2006-H(P) 14064 dated 23-12-2006 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar to exercise powers and jurisdiction for investigation of the offence punishable under the provision of Foreign Contribution (Regulation) Act, 1976 (Central Act 49 of 1976) in respect of complaint dated 18-01-2006 lodged by Under Secretary, FCRA, New Delhi against Tauheed Education Trust, Kishanganj, Bihar.

[No. 228/16/2007-AVD-11]

CHANDRA PRAKASH, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2602.—भारतीय रिजर्व बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से एतद्वारा, डा. राजीव कुमार को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में, अंशकालिक, गैर-सरकारी निदेशक के रूप में नामित करती है।

[फा. सं. 8/1/2008-बीओ-1]

जी.बी. सिंह, उप सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 8th September, 2008

S.O. 2602.—In exercise of the powers conferred by clause (d) of Section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India hereby nominates Dr. Rajiv Kumar as part-time non-official director on the Central Board of Directors of State Bank of India for a period of three years from the date of notification or until further orders, whichever is earlier.

[F.No. 8/1/2008-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2603.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 9 के उप खण्ड (1) तथा (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श के पश्चात्, एतद्वारा, श्री जगदीश चंद शण्डिल, एम एम जी स्केल III, यूको बैंक को 07-10-2010 तक की अवधि के लिए अथवा उनके यूको बैंक में अधिकारी के पद पर बने रहने तक अथवा अगले आदेशों तक, जो भी पहले हो, यूको बैंक के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में पुनर्नामित करती है।

[फा.सं. 9/13/2007-बीओ-1]

जी.बी. सिंह, उप सचिव

New Delhi, the 8th September, 2008

S.O. 2603.—In exercise of the powers conferred by clause (f) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby re-nominates Shri Jagdish Chand Shandil, MMG Scale III UCO Bank, as Officer Employee Director on the Board of Directors of UCO Bank for a period up to 07-10-2010 or until he ceases to be an officer of the UCO Bank or until further orders, whichever is the earliest.

[F.No. 9/13/2007-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 9 सितम्बर, 2008

का.आ. 2604.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 9 के उप खण्ड (1) तथा (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (च)

द्वारा प्रवर्तन शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के नगरपाले के अधीन, एन.एस.डी. एन.एम. जी स्कूल (1) विजया बैंक को अधिभुक्ता की लिखित में प्रवर्तन की अवधि के लिए अधिकतम उनके विजया बैंक में अधिभुक्ता के पद पर बने रहने तक अथवा उसके आदेशों तक, जो भी पहले हो, विजया बैंक के निदेशक मंडल में अधिकारी कर्मचारी निदेशक को स्वयं में नामित करती है।

[फा.सं. 2007/2008-सौ.सं. 1]

जी.बी. सिंह, उपायुक्त

New Delhi, the 9th September, 2008

S.O. 2604. — In exercise of the powers conferred by clause (1) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby nominates Shri Ronjan Shetty, MMG Scale II Vidyut Bank, as Officer Employee Director on the Board of Directors of Vijaya Bank for a period of three years from the date of notification or until he ceases to be an officer of the Vijaya Bank or until further orders, whichever is the earliest.

[F.No. 2007/2008-III]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 10 सितम्बर, 2008

का.आ. 2605. — केन्द्रीय विनियमन अधिनियम, 1970/1980 का (1) की धारा 9 का प्रवर्तन शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक को सिफारिश पर एन.एस.डी. एन.एम. करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (न) के उपखण्ड (1) के उपबंध बैंक और सहकारी बैंक नहीं होंगे, जब तक उक्त संबंध बैंक और सहकारी बैंक एवं प्रबंध निदेशक श्री एम.डी. मल्ल द्वारा प्राविष्ट स्वीकृत व्यवस्थापन मैनेजमेंट लि. के साथ बैंक की प्रस्तावित ज्वॉइंट वेंचर एंजोस्टेन जॉयंट कंपनी के बोर्ड में निदेशक का पदभार ग्रहण करने में है।

[फा.सं. 2007/2008-सौ.सं. 1]

जी.बी. सिंह, उपायुक्त

New Delhi, the 10th September, 2008

S.O. 2605. — In exercise of the powers conferred by Section 9 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (n) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Bank of Commerce as far as it relates to taking up directorship by M.D. Mallya, Chairman & Managing Director of the bank on the Board of the proposed Joint Venture Asset Management

Company of the Bank of Commerce Pioneer Global Asset Management Ltd.

[F.No. 2007/2008-III]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 10 सितम्बर, 2008

का.आ. 2606. — केन्द्रीय बैंक (प्रबंध एवं प्रवर्तन अधिनियम, 1970 के खण्ड (न) के उपखण्ड (1) (क) के साथ विनियम बैंककारी कंपनी (उपक्रमों का अधिभुक्ता अधिनियम, 1970 की धारा 9 की उपधारा (1) के उपखण्ड (1) (क) द्वारा प्रवर्तन शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एन.एस.डी. एन.एम. विशेष सहकार्य, युनियन बैंक को निदेशक मंडल में प्रवर्तन कर्मचारी निदेशक को स्वयं में नियुक्त करती है। वह अधिभुक्ता की लिखित से तीन वर्षों की अवधि के लिए अथवा उसके आदेशों तक, जो भी पहले हो, पद पर कार्य करेगा।

[फा.सं. 2007/2008-अर्थ.सं. 1]

सुबोध मुख, अवर सचिव

New Delhi, the 10th September, 2008

S.O. 2606. — In exercise of the powers conferred by clause (c) of the Sub-section (1) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with Sub-clause (1) of Clause 9 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/80, the Central Government hereby appoints Shri N. Shankar, Special Assistant, Union Bank of India, M.S. Marg, Branch, Co., Mumbai as Working Employee Director on the Board of Directors of Union Bank of India. He will hold office for a period of three years from the date of Notification or until further orders, whichever is earlier.

[F.No. 2007/2008-III]

G. V. SUNDAR SODI, Under Secy.

नई दिल्ली, 10 सितम्बर, 2008

का.आ. 2607. — केन्द्रीय बैंक (प्रबंध एवं प्रवर्तन अधिनियम, 1970 के खण्ड (न) के उपखण्ड (1) (क) के साथ विनियम बैंककारी कंपनी (उपक्रमों का अधिभुक्ता अधिनियम, 1970 की धारा 9 की उपधारा (1) के उपखण्ड (1) (क) द्वारा प्रवर्तन शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एन.एस.डी. एन.एम. विशेष सहकार्य, केन्द्रीय बैंक को निदेशक मंडल में प्रवर्तन कर्मचारी निदेशक को स्वयं में नियुक्त करती है। वह अधिभुक्ता की लिखित से तीन वर्षों की अवधि के लिए अथवा उसके आदेशों तक, जो भी पहले हो, पद पर कार्य करेगा।

[फा.सं. 2007/2008-अर्थ.सं. 1]

सुबोध मुख, अवर सचिव

New Delhi, the 15th September, 2008

S.O. 2607.—In exercise of the powers conferred by clause(c) of the Sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with Sub-clause (2)(a) of Clause 9 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby appoints Shri Devender Dass Rustagi, Special Assistant, Canara Bank, Recovery Section, Circle Office, Nehru Place, New Delhi as Workmen Employee Director on the Board of Directors of Canara Bank. He will hold office for a period of three years from the date of Notification or until further orders, whichever is earlier.

[F.No.15/6/2007-IR]

RAJINDER SOOD, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

[आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी
(आयुष) विभाग]

नई दिल्ली, 4 सितम्बर, 2008

का.आ. 2608.—केंद्रीय सरकार राजभाषा "संघ के शासकीय प्रयोजनों के लिए प्रयोग" नियम 1976 के नियम 10 के उप-नियम, (4) के अनुसरण में स्वास्थ्य और परिवार कल्याण मंत्रालय के आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी (आयुष) विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित संस्थानों जिनके 80 प्रतिशत कर्मचारियों ने हिंदी में कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

- | | |
|---|------------|
| 1. केंद्रीय आयुर्वेद अनुसंधान संस्थान | सखनऊ |
| 2. केंद्रीय आयुर्वेद अनुसंधान संस्थान | भुवनेश्वर |
| 3. क्षेत्रीय अनुसंधान संस्थान(आयुर्वेद) | -झाँसी |
| 4. क्षेत्रीय क्षेत्रीय अनुसंधान संस्थान(आयुर्वेद) | -बंगलूर |
| 5. क्षेत्रीय अनुसंधान संस्थान(आयुर्वेद) | -जम्मू |
| 6. क्षेत्रीय अनुसंधान संस्थान(आयुर्वेद) | -विजयवाड़ा |
| 7. क्षेत्रीय यूनानी चिकित्सा अनुसंधान संस्थान | -पटना |

[सं. ई. 11018(2)/2/2003-पा.चि.प.(रा.भा.)]

शिव बसंत, संयुक्त सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE
[Department of Ayurved, Yoga & Naturopathy, Unani,
Siddha Homeopathy (AYUSH)]

New Delhi, the 4th September, 2008

S.O. 2608.—In pursuance of sub-rule (4) of the Rule 10 of the Official Language "Use for official purpose

of the Union" Rule, 1976 the Central Govt. hereby notifies the following offices under the administrative control of Department of AYUSH Ministry of Health & Family Welfare whereof 80% staff have acquired the working knowledge of Hindi:—

1. Central Ayurved Research Institute Lucknow
2. Central Ayurved Research Institute Bhubneswar
3. Regional Research Institute (Ayurved) Jhansi
4. Regional Research Institute (Ayurved) Bangalore
5. Regional Research Institute (Ayurved) Jammu
6. Regional Research Institute (Ayurved) Vijaywada
7. Regional Research Institute of Unani Medicine Patna

[No. E. 11018(2)/2/2003-I.S.M.(O.L.)]

SHIV BASANT, Jr. Secy.

घेत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय

(सड़क परिवहन और राजमार्ग विभाग)

नई दिल्ली, 29 अगस्त, 2008

का.आ. 2609.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में सड़क परिवहन और राजमार्ग विभाग के प्रशासनिक नियंत्रणाधीन भारतीय सड़क कांग्रेस, जामनगर हाउस, शाहजहां रोड, नई दिल्ली जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्य-साधक ज्ञान प्राप्त कर लिया है, को एतद्द्वारा अधिसूचित करती है।

[सं. ई. 11011/2/2007-हिंदी]

सरोज कुमार दास, संयुक्त सचिव

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Department of Road Transport & Highways)

New Delhi, the 29th August, 2008

S.O. 2609.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official purposes of Union) Rules, 1976, the Central Government hereby notifies the Indian Road Congress, Jamnagar House, Shahjhan Road, New Delhi under the Administrative Control of the Department of Road Transport & Highways, 80% staff whereof have acquired the working knowledge of Hindi.

[No.E. 11011/2/2007-Hindi]

SAROJ KUMAR DAS, Jr. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 4 सितम्बर, 2008

का.आ. 2610.- भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये गये (को) में संशोधन किया गया/किये गये हैं:-

अनुसूची

क्रम सं.	संशोधित भारतीय मानक(को) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 2549:1994 प्रकृतित लौह क्षेप्य (स्क्रेप) का वर्गीकरण-रीति सहित (पहला पुनरीक्षण)	संशोधन संख्या 2 अगस्त 2003	31 अगस्त 2008

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ :एमटीडी4:टी-2]

डा. (श्रीमती) स्नेह भाट्टा, वैज्ञानिक एफ एवं प्रमुख (एमटीडी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 4th September, 2008

S.O. 2610.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard(s)	No. & year of amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 2549: 1994 Code for classification of processed ferrous scrap (first revision)	Amendment No. 2 August 2008	31 August 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD4-I-2]

DR. (MRS.) SNEH BHATTA, Scientist F & Head (Met Engrg.)

नई दिल्ली, 4 सितम्बर, 2008

का. आ. 2611.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आईएस 2830 : 1992 सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कार्बन डलवां इस्पात बिलेट इंगट, बिलेट, ब्लूम और स्लेब की विशिष्टि (दूसरा पुनरीक्षण)	संशोधन संख्या 3, अगस्त 2008	21 अगस्त, 2008

इन संशोधनों की प्रतियाँ भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 4/टी-94]

डा. (श्रीमति) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 4th September, 2008

S.O. 2611.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards (s) amendment (s)	No. & Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 2830 : 1992 Carbon steel cast billet ingots, billets, blooms and slabs for rerolling into steel for general structural purposes (second revision)	Amendment No. 3, August 2008	21 August, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : MTD 4/T-94]

DR. (MRS.) SNEH BHATLA, Scientist 'F' & Head (Met Engg.)

नई दिल्ली 9, सितम्बर, 2008

का. आ. 2612.—भारतीय मानक (कों) ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गये हैं वे स्थापित हो गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आईएस 8777 : 2008/आईएसओ 3410:1989 कृषि मशीनरी-असीमित परिवर्तनीय-गति वाली वी-बेल्ट और संगत घिनियों के खोंच सेक्शन (पहला पुनरीक्षण)	—	अगस्त, 2008

(1)	(2)	(3)	(4)
2	आईएस 15833:2008 धातु काटिंग के लिए आइसोटर्प आई के शीटों का चयन-अनुशंसएँ		ईए, 2008
3	आईएस 15836 (भाग 1):2008/आईएसओ 15834-1:2000 मशीनरी की सुरक्षा के लिए इर्गोनॉमिक डिजाइन भाग 1 मशीनरी में सम्पूर्ण ब्रशरी में आधिगमन की ओरनिंग के लिए अपेक्षित आयाम प्राप्त करने के सिद्धांत	—	अप्रैल, 2008
4	आईएस 15836 (भाग 2):2008/आईएसओ 15834-2:2000 मशीनरी की सुरक्षा के लिए इर्गोनॉमिक डिजाइन भाग 2 प्रवेश अधिगमन के लिए अपेक्षित आयाम प्राप्त करने के सिद्धांत	—	अप्रैल, 2008

इन भारतीय मानकों की प्रतियाँ भारतीय मानक अ्यम, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, शक्तिय कार्यालयों, नई दिल्ली, कोलकाता, गण्डोगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, शोल्लैं, भोपाल, भुवनेश्वर, बंगलूरु, भुवनेश्वरी, हैदराबाद, जबलपुर, कानपुर, लखनऊ, पटना, पणो तथा तिरुवनन्तापुरम में उपलब्ध हैं।

[154] [155] [156] [157]

सु. भट्टराज्यं, 'सं. वि. वि. वि.' एवं पास्तुत । (प. वि. वि. वि.)

New Delhi, the 9th September, 2008

S.O. 2612.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule here to annexed have been established on the date indicated against each :

4.1.1.1. FEMULIF

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standard (s) Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1	IS 8777:2008/ISO 3410:1989 Agricultural machinery- Endless variable- speed V-belts and Groove Sections of Corresponding Pulleys (first revision)	Amendment No. 1, 2008	August, 2008
2	IS 15777: 2008 Selection of Hacksaw Tooth for Metal Cutting - Recommendations	—	June, 2008
3	IS 15836 (Part 1): 2008/ISO 15534-1:2000 Ergonomic Design for the Safety of Machinery Part 1 Principles for Determining the Dimensions Required for Openings for Whole-body Access into Machinery	—	August, 2008
4	IS 15836 (Part 2): 2008/ISO 15534-2:2000 Ergonomic Design for the Safety of Machinery - Part 2 Principles for Determining the Dimensions Required for Access Openings	—	August, 2008

Copy of these Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

नई दिल्ली, 9 सितम्बर, 2008

का. आ. 2613.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न भारतीय मानक में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संशोधित भारतीय मानक की संख्या और वर्ष संख्या	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
1. आईएस 3099 (भाग 1 और 2) : 1992 सूक्ष्मदर्शी यंत्र—स्लिप और स्लाइड—विशिष्ट भाग 1 सूक्ष्मदर्शी यंत्र—स्लिप भाग 2 सूक्ष्मदर्शी यंत्र स्लाइड (पहला पुनरीक्षण)	4	अगस्त 2008
2. आईएस 4003 (भाग 1) : 1978 पाइप पाने—विशिष्ट भाग 1 सामान्य उपयोग हेतु (पहला पुनरीक्षण)	2	अगस्त 2008

इस भारतीय मानकों के संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूने तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : पीजीडी/जी-3.5]

सु. भट्टाचार्य, वैज्ञानिक 'ई' एवं प्रमुख (पीजीडी)

New Delhi, the 9th September, 2008

S.O. 2613.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been amended on the date indicated against each :—

SCHEDULE

Sl.	No. & Year of the Indian Standards Established	No. of Amendments & Date Established	Date of	No.
(1)	(2)	(3)	(4)	
1	IS 3099 (Part 1 and 2) : 1992 Microscopes—Slips and Slides—Specification Part 1 Microscope Slips Part 2 Microscope Slides (First Revision)	4	August 2008	
2	IS 4003 (Part 1) : 1978 Specification for Pipe Wrenches Part 1 General Purpose (First Revision)	2	August 2008	

Copy of these Amendments of Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PGD/G-3.5]

S. BHATTACHARYA, Sc. 'E' & Head (PGD)

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2614.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गए हैं वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	7836492	9-6-2008	त्रिधारा फूड्स एंड बेक्वेरेजेज गट संख्या 36, एट मोहादस, पोस्ट अथ, तालुका चाकूर, जिला लातूर, महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2.	7847093	3-7-2008	साइकृष्णा एग्रो फूड इंडस्ट्रीज, मिलिकत नं. 423 ए/पी चंदनवाडी, बोरीभादक, तालुका दोंड, जिला पुणे, महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलाव)	11.12.04			2004
3.	7855092	30-6-2008	फ्रेड्स मिनरल वॉटर प्रा. लि., गट सं. 1030/2, एट पोस्ट पेल्ने, तालुका हवेली, जिला पुणे, महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलाव)	10.12.03			2004
4.	7845493	7-7-2008	डीईआं इंडस्ट्रीज गट सं. 224, एट जनपुरी, तालुका लोहा, जिला नांदेड-431611 महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलाव)	10.12.03			2004
5.	7855496	3-7-2008	सरूपचंद कृष्णाजी अलियाज 85, गुरुवार पेठ, भानेरा के भामने चायटी चौक, करण, 415110 जिला सातारा, महाराष्ट्र	स्वर्ण और स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता और चिह्नंकन	10.12.03			1999
6.	7855395	18-6-2008	चैतन्य फूड्स एंड एग्रे इंडस्ट्रीज, प्लॉट नं. ग्री-131, एट एंड टी कंपनी के सामने, निन्द्यवदन रोड, एमआयडीसी, जिला अहमदनगर, 414111-महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलाव)	10.12.03			2004
7.	7855294	4-7-2008	अथर्व एग्रो इंडस्ट्रीज, म. नं. 3/1, 4/1/1, दत्तनगर, आम्बेवाव (बीके) कन्नड खुर्द, हड्डे, जिला पुणे-411048 महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलाव)	10.12.03			2004
8.	7855603	7-7-2008	फिनोलेक्स कंक्टस लिमिटेड, (एचबीसी डिबोर्जन), गट सं. 343, उरसे, तालुका माहंग, जिला पुणे-410506, महाराष्ट्र	क्रोसलिन्कड पॉलिथिन इंशुलैटेड पीवीसी शीट कंक्टस; भाग-1 कार्यकारिता चंक्रता तक और 1100 को सहित	31.08.07	01		1988
9.	7855702	7-7-2008	फिनोलेक्स कंक्टस लिमिटेड, (एचबीसी डिबोर्जन), गट सं. 343, उरसे, तालुका माहंग, जिला पुणे-410506, महाराष्ट्र	क्रोसलिन्कड पॉलिथिन इंशुलैटेड पीवीसी शीट कंक्टस; भाग-2 कार्यकारिता वोल्टता 3.3 किवा तक और 3.3 किवा सहित	31.08.07	02		1985
10.	7855803	7-7-2008	अतुल इंटरप्राइजेज, स. नं. 1014, मायकेल, तालुका खेड, (रोडकोर्समेंट सहित एवं रजिस्ट्र)	पीकॉस्ट कंक्रीट पाइप (रोडकोर्समेंट सहित एवं रजिस्ट्र)	4.8.88			2003

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
11.	7835692	10-7-2008	सनमित्रा फूड्स एंड ड्रिंक्स 16/4, मलकापुर तालुका उदगीर, जिला लातूर, 413517, महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक तिनरल जल के अलावा)	14543			2004
12.	7857504	15-7-2008	शिवगंगा प्रीस्टेस्ड पाइप्स प्रा.लि. गट सं. 219, मिरज पंडरपुर रोड, एट पोस्ट हारोली तालुका कवथे महानकाल, जिला सांगली 416405, महाराष्ट्र	प्रीकोस्ट कांक्रीट पाइप्स (फिटिंग सहित)	784			2001
13.	7857706	21-7-2008	मेसर्स श्री सोनीगारा ज्वैलर्स दुकान नं. 34, कोहिनुर आर्काड निगडी बस स्टॉप के पास, निगडी जिला पुणे 411044, महाराष्ट्र	स्वर्ण और स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता और चिह्नांकन	1417			1999
14.	7857807	21-7-2008	रमेश कुमार पुखराज पोरवाल 1794, गांधी चौक, इस्लामपुर (बालवा) जिला सांगली 415409, महाराष्ट्र	स्वर्ण और स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता और चिह्नांकन	1417			1999

[सं. सीएमडी/13 : 11]

पी. के. गम्भीर, उप सहायनिदेशक (मुहर)

New Delhi, the 11th September, 2008

S.O. 2614.— In pursuance of sub-regulation 5 of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1.	7836492	9-6-2008	Tridhara Foods & Beverages Gat No. 36. At Mohadal Post Asta Taluka Chakur, District Latur	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
2.	7847093	3-7-2008	Saikrishna Agro Food Industries Milkat No.423 A/P Chandan- wadi, Boribhadak Taluka Daund, District Pune	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
3.	7855092	30-6-2008	Friends Mineral Water Pvt Ltd. Gat No. 1030/2 At 1 Post Pernu Taluka Haveli District Pune 412216	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
4.	7845493	7-7-2008	Deo Industries Gut No. 224 At Janapuri Taluka Loha District Nanded 431611	Packaged drinking water (Other than packaged natural mineral water)	14543			2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
5.	7855496	7-7-2008	Sarupchend Krishnaji Oswal 85, Guruwar Peth, Opp. Manora, Chawadi Chowk Karad 415110, District Satara	Gold and Gold alloys, jewellery/artefacts-Fineness and marking	1417			1999
6.	7855395	18-6-2008	Chaitanya Foods & Agro Industries Plot No. P-131 Opp. L&T Company, Nimbalk Road, MIDC, District Ahmednagar 414111	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
7.	7855294	4-7-2008	Atharva Agro Industries H. No. 3/1, 4/1/1 Dattanagar Ambegaon (Bk) Katraj- Mumbai Highway District Pune 411048	Packaged drinking water (Other than packaged natural mineral water),	14543			2004
8.	7855601	7-7-2008	Finolex Cable Ltd. (HVPC Division) Gat No. 343 Urse, Taluka Maval, District Pune 410506	Crosslinked polyethylene insulated PVC sheathed cables:Part 1 for working voltage upto and including 1100 V	7098	01		1988
9.	7855702	7-7-2008	Finolex Cable Ltd. (HVPC Division) Gat No. 343 Urse, Taluka Maval District Pune 410506	Crosslinked polyethylene insulated PVC sheathed cables:Part 2 for working voltage from 3.3 Kv upto and including 33 Kv	7098	02		1988
10.	7855803	7-7-2008	Atul Enterprises S.No. 1014 Markal Taluka Khed, District Pune 412105	Precast concrete pipes (with and without reinforcement)	458			2003
11.	7855692	10-7-2008	Sanmitra Food & Drinks 16/4, Malkapur Taluka Udgar District Latur 413517	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
12.	7857504	15-7-2008	Shivganga Prestressed Pipes Pvt Ltd. Gat No. 219 Miraj Pandharpur Road, At Post Haroli Taluka Kavathe, Mahankal District Sangli 416405	Precast concrete pipes (including fittings)	784			2001
13.	7857706	21-7-2008	M/s Shree Sonigara Jewellers Shop No. 34, Kolinor Arcade Near Nigdi Bus Stop, Nigdi, District Pune 411044	Gold and Gold alloys, jewellery/artefacts-Fineness and marking	1417			1999
14.	7857807	21-7-2008	Ramesh Kumar Pukhray Porwal 1794, Gandhi Chowk Islanpur (Walwa) District Sangli 415409, Maharashtra	Gold and Gold alloys, jewellery/artefacts-Fineness and marking	1417			1999

नई दिल्ली 12 सितम्बर, 2008

का. आ. 2615.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गए हैं वे स्वीकृत कर दिए गए हैं :-

अनुसूची

जुलाई 2008 में स्वीकृत लाइसेंस

क्रम संख्या	लाइसेंस नंबर	लाइसेंसधारी का नाम व पता	उत्पाद का नाम तथा आई नंबर	लाइसेंस स्वीकृत करने की तिथि
1	2	3	4	5
1	7854090	ओमेगा इलेक्ट्रिकल, 19 बी, शारदा एस्टेट, पिकरस लिमिटेड के पास, अनिल स्टार्च रोड, बापूनगर अहमदाबाद	ओपनवेल सबमर्सिबल पम्पसैट आई एस 14220 : 1994	1-7-2008
2	7854797	डी क्यूब ज्वैलर्स, 312, इस्कान आरकडे, रतनम बिल्डिंग के सामने, सी जौ रोड, अहमदाबाद	स्वर्ण तथा स्वर्ण मिश्र धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहराकन आई एस 1417 : 1997	3-7-2008
3	7854801	किंजल ज्वैलर्स, 8, भारत नगर के सामने, अरबन बैंक रोड, राजकमल पेट्रोल पम्प के सामने, मेहसाना	स्वर्ण तथा स्वर्ण मिश्र धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहराकन आई एस 1417 : 1997	3-7-2008
4	7855597	मैट्रो फूड कलर, प्लॉट नंबर 6, महा गुजरात एस्टेट, सर्वोत्तम होटल के पीछे, गोंव मोरधिया, अहमदाबाद	सिंथेटिक फूड कलर प्रोपरेशन तथा मिक्सचर, आई एस 5346 : 1994	7-7-2008
5	7856094	इंडियन पम्प, 38/39, अंबिका इंडस्ट्रियल एस्टेट, जी डी हाई स्कूल के पास, सैजपुर बोधा, अहमदाबाद	ओपनवेल सबमर्सिबल पम्पसैट, आई एस 14220 : 1994	8-7-2008
6	7856195	रवि पम्प इंडस्ट्रीज, 14/15, सर्वोदय एस्टेट, टाटा गोडाउन के पास, चामुंडा ब्रीज के पास, असारवा, अहमदाबाद	सबमर्सिबल पम्पसैट, आई एस 8034 : 2002	8-7-2008
7	7856401	सरस प्लाईवुड प्रोडक्ट प्रा लि, प्लॉट नंबर 744, न्यू जी आई डी सी गुडलाव, आई एस 1659 : 2004 बलसाद	क्लाक बोर्ड	10-7-2008
8	7856805	इंडियन पम्प, 38/39, अंबिका इंडस्ट्रियल एस्टेट, जी डी हाई स्कूल के पास, सैजपुर बोधा, अहमदाबाद	सबमर्सिबल पम्पसैट, आई एस 8034 : 2002	11-7-2008
9	7856906	राजमल लखीचंद ज्वैलर्स प्रा लि, 124, गोड डोंड रोड, अठर्वा, सूरत	स्वर्ण तथा स्वर्ण मिश्र धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहराकन आई एस 1417 : 1997	11-7-2008

1	2	3	4	5
10.	7857096	ज्योति पावर ट्रांसमिशन प्रा. लि., प्लॉट नंबर ए-9/17/09 स्टॉल टाउन, नोवा पेट्रोलियम के सामने, गॉड बोरविया, ल. मानंद, आई एस 398(4) : 1994 अहमदाबाद	एल्युमिनियम कंडक्टर पार. अंतर्ग्रहण ट्रांसमिशन फसस	14-7-2008
11.	7857201	मार्डेन ग्रामउद्योग, प्लॉक नंबर 272, गाँव जलक, बालकुका देहगाम, गांधीनगर	प्लॉक बोर्ड, आई एस 1659 : 2004	14-7-2008
12.	7857302	मार्डेन ग्रामउद्योग, प्लॉक नंबर 272, गाँव जलक, बालकुका देहगाम, गांधीनगर	प्लाईवुड फार जलकन गरम, आई एस 303 : 1989	14-7-2008
13.	7858203	पटेल कंस्ट्रक्शंस प्रा. लि., प्लॉट नंबर 100 से 103 डिस्ट. मार्केट, जी आई डी सी भाखुभ	बुड प्रोडक्ट प्रोत्तैमिनेटिंग गरमिना, बोर्ड आई एस 12823 : 1999	21-7-2008

(मं. करे एस डी 13:11)

पी. के. गणेश, उप महानिदेशक (पुनर.)

New Delhi, the 12th September, 2008

S.O. 2615.— In pursuance of sub-regulation 5 of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE**Granted Licences for the Month of July, 2008**

Sl No.	Licence No.	Name of the firm and address	IS Number & Product	Date of Grant
1	2	3	4	
1.	7854090	Omega Electricals 19-B, Sharda Estate NR Pipers Ltd, Azli Syarch, Road, Bapunagar, Ahmedabad	Openwell Submersible Pumpsets IS 14220 : 1994	1-7-2008
2.	7854797	Dee Cubes Jewels 312, Escon Arcade, Opp Ratnam Building, C G Road, Ahmedabad	Gold and Gold Alloys, Jewellery Artefacts-Fineness and Marking IS 1417 : 1999	3-7-2008
3.	7854801	Kingel Jewellers, 8, Opp Bharat Nagar Society, Urban Bank Road, Opp Rajkamal Petrol Pump, Mahsana	Gold and Gold Alloys, Jewellery Artefacts-Fineness and Marking IS 1417 : 1999	3-7-2008
4.	7855597	Metro Food Colour, Plot No. 6, Mahagujrat Estate, B/H Sarvottam Hotel, Village Moraiya, Dist Ahmedabad	Synthetic Food Colour-Preservation and Mixtures IS 5346 : 1994	7-7-2008
5.	7856094	Indian Pumps, 38/39, Ambika Industrial Estate, NR, G.D. High School, Saijpur Bogha, Ahmedabad	Open well, Submersible Pumpsets IS 14220 : 1994	8-7-2008
6.	7856195	Ravi Pump Industries, 14/15, Suryoday Estate, NR, Tara Godown, NR Charnunda Bridge, Asarva, Ahmedabad	Submersible Pumpsets, IS 8034 : 2002	8-7-2008
7.	7856401	Saras Plywood Product Pvt Ltd Plot No. 734, New GUDC Gundlay, Valsad	Block Boards IS 1659 : 2004	10-7-2008

1	2	3	4	5
8.	7856805	Indian Pumps 38/39, Ambika Industrial Estate, NR. G. D. High School, Saijpur Bogha, Ahmedabad	Submersible Pumpsets IS 8034 : 2002	11-7-2008
9.	7856906	Rajkarnal Lakhichand Jewellers Pvt Ltd 124, Ghod Dod Road, Athwa, Surat	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking IS 1417 : 1999	11-7-2008
10.	7857096	Jyoti Power Transmission Pvt Ltd, Plot No. A-9/17/19, Steel Town Opp Nova Petroleum, Village Moraiya, Ta Sanad, Ahmedabad	Aluminium conductors for overhead transmission purposes: Part 4 Aluminium alloy stranded conduc- tors (aluminium magnesium silicon type) IS 398 (Part 4) : 1994	14-7-2008
11.	7857201	Modern Gramoudyog Block No. 272 Village Zak Taluka Dehgam Dist Gandhinagar	Block Boards IS 1659 : 2004	14-7-2008
12.	7857302	Modern Gramoudyog Block No. 272 Village Zak Taluka Dehgam Dist Gandhinagar	Plywood for general purposes IS 303 : 1989	14-7-2008
13.	7858203	Patel Kenwood Pvt Ltd Plot No. 100 to 103 Timber Market GIDC Bharuch	Wood Products-Prelaminated Particle Boards IS 12823 : 1990	22-7-2008

[No CMD/13 : 11]

P.K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 12 सितम्बर, 2008

का. आ. 2616.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसारण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गए हैं वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	वैधता तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या भाग/अनु वर्ष
1	2	3	4	5	6
1	7851084	17-6-2009	भाग्यश्री इलेक्ट्रिकल्स शेड नं. 7, गाला सं. 8 सुनीता इंड. एस्टेट, जयनाम मॉल के सामने, एलबीएस मार्ग भांडुप(प) ग्रेटर बाम्बे, मंग्वई, महाराष्ट्र 400 078	बिजली के घरेलू खाद्य मिक्सर (द्रवीयकरक और ग्राइंडर)	आईएस 4250:1980
2	7851488	17-6-2009	सिटी केबल कारपोरेशन ए/8 स्वामी इंडस्ट्रियल सेंटर, गौराईपाडा, थाने, दक्षिण-पूर्व महाराष्ट्र 401 208	पीवीसी रोपित (भारी कार्य) बिजली की केबल भाग 1 1100 वोल्ट तक की कार्यकारी वाल्तता के लिए	आईएस 1554: भाग 1: 1988
3	7846394	20-5-2009	कमांडर इलेक्ट्रीकल्स डी-114, 115, श्रीनाथ इंड एस्टेट, सर्वे नं. 197, पोछे:बोल्टाज, वापी-सिलवासा रोड, दादरा चेक पोस्ट दादरा एवं नगर हवेली 396 230	लुमिनयर्स : भाग 5 विशेष अपेक्षाएं अनुभाग 3:सड़क एवं गली में प्रकाश के लिए लुमिनयर्स	आईएस 10322:भाग 5: अनुभाग 3 : 1987

1	2	3	4	5	6
4	7846091	26-5-2009	हाई-टेक स्वीचिंगर (इंडिया) यूनिट सं. ए/132 अंसा. इंडस्ट्रियल एस्टेट, साकी बिहार रोड, मुम्बई ग्रेटर बाम्बे साकी नाका 400 072	1000 वी. एसी एवं 1500 वी. डीसी से अनधिक वोल्टेज के लिए अल्प वोल्टेज फ्यूज	आईएस 13703:भाग 2: अनुभाग 1 : 1993
5	7850183	15-6-2009	पॉलुशन प्रोटेक्शन सिस्टमस मुम्बई प्रा लि 226/212, देवेन्द्र इंडस्ट्रियल एस्टेट, लोकमान्य नगर, पाडा नं. 2, यशोधन नगर, थाने (प) महाराष्ट्र 400 606	विस्फोटो गैस वायुमंडल के लिए विद्युत उपकरण -आंतरिक सुरक्षा "I" - विशिष्ट	आईएस 5780:2006
6	7851387	17-6-2009	सिटी कंबल कारपोरेशन ए/8 स्वामी इंडस्ट्रियल सेंटर, गौराईपाडा, थाने, बसई-पूर्व महाराष्ट्र 401 208	1100 वोल्ट तक की कार्यकारी बोल्टता के लिए पीवीसी विद्युत रोधी कंबल	आईएस 694 : 1990
7	7846293	26-5-2009	कमांडर इलैक्ट्रोकल्स डी-114, 115, श्रीनाथ इंड एस्टेट, सर्वे नं. 197, पीछे:बोल्ढाज, वापी-सिलवासा रोड, दादरा चेंक पोस्ट दादरा एवं नगर हवेली 396 230	लुमिनयर्स : भाग 5 विशेष अपेक्षाएं अनुभाग 1:सामान्य प्रयोजन के लिए लुमिनयर्स	आईएस 10322:भाग 5: अनुभाग 1 : 1985
8	7850082	15-6-2009	पॉलुशन प्रोटेक्शन सिस्टमस मुम्बई प्रा लि 226/212, देवेन्द्र इंडस्ट्रियल एस्टेट, लोकमान्य नगर, पाडा नं. 2, यशोधन नगर, थाने (प) महाराष्ट्र 400 606	बिजली के उपस्कर के लिए ज्वाला सह आवारा	आईएस 2148 : 2004
9	7846697	27-5-2009	जय लक्ष्मी वायर्स एंड कंबल्स गाला सं. 2 महेश एसिड के पीछे, महादेव कम्पाउंड, समीप जय माता जी कम्पाउंड, ग्रेटर बाम्बे डल्हास नगर महाराष्ट्र 421002	1100 वोल्ट तक की कार्यकारी बोल्टता के लिए पीवीसी विद्युत रोधी कंबल	आईएस 694 : 1990
10	7849202	8-6-2009	कं.सी. पावरट्रेक्स, एस. नं. 185/1, प्लॉट सं. 7, डोकमडों दादरा एवं नगर हवेली, सिलवासा दादरा एवं नगर हवेली 396 230	पीवीसी रोधित (भारी जार) बिजली की कंबल भाग 1 1100 1988 बोल्ट तक की कार्यकारी बोल्टता के लिए	आईएस 1554:भाग 1: 1988
11	7852591	24-6-2009	पवन एप्लायंसेस गोदाम सं. 9, कं.सी. कम्पाउंड, टी.जे.रोड, सम्मुख: स्वयं मिल ग्रेटर बाम्बे सेवरी महाराष्ट्र 400 015	बिजली के घरेलू खाद्य भिन्न (द्वीयकरक और ग्राइंडर)	आईएस 4250:1980

[सं. सी एच डी-13/11

जे. के. गम्भार, उप महानिदेशक (भूहर)

New Delhi, the 12th September, 2008

S.O. 2616,— In pursuance of sub-regulation 5 of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl No.	Licence No.	Validity Date	Name and address (factory) of the Party	Product	IS No./Part/Sec Year
1	2	3	4	5	6
1	7851084	17-6-2009	Bhagyashree Electricals Shed No. 7, Gala No. 8, Sunita Indl. Estate, Opp Jainam Mall, LBS. Marg, Bhandup(W) Greater Bombay Mumbai, Maharashtra 400078	Specification for Domestic Electric Food-Mixers (Liquidizes and Grinders)	IS 4250 : 1980
2	7851488	17-6-2009	Citi Cable Corporation A/8 Swami Industrial Centre, Gaurai para Thane Vasai-E, Maharashtra 401208	PVC insulated (heavy duty) electric cables:Part 1:For working voltages upto and including 1100 V	IS 1554 : Part 1:1988
3	7846394	26-5-2009	Commander Electricals D-114, 115, Sreenath Indl.Estate, Survey No. 197, Behind Voltas, Vapi-Silvassa Road, Dadra Check Post, Dadra and Nagar Haveli, Dadra, Dadra and Nagar Haveli 396230	Luminaries : Part 5 Particular requirements, Section 3 Luminaires for road and street lighting (superseding IS : 2149)	IS10322:Part 5:Sec 3: 1987
4	7846091	26-5-2009	Hi-Tech Switchgear (India) Unit No. A/132 Ansa Industrial Estate Saki Vihar Road, Mumbai Greater Bombay Sakiraka Maharashtra 400072	Low-voltage fuses for voltages not exceeding 1000V AC or 1500V DC: Part 2 Fuses for use by authorized persons. Sec 1 Supplementary requirements	IS 13703:Part 2:Sec 1: 1993
5	7850183	15-6-2009	Polution Protection Systems Mumbai Pvt Ltd. 226/212, Devendra Industrial Estate, Lokmanya Nagar, Pada, No. 2 Yasodhan Nagar, Thane(W) Maharashtra 400606	Electrical Apparatus for Explosive Gas Atmospheres-Intrinsic Safety "I"-Specification	IS 5780 : 2006
6	7851387	17-6-2009	Citi Cable Corporation A/8 Swami Industrial Centre, Gaurai para Thane Vasai-E Maharashtra 401208	PVC insulated cables for working voltages upto and including 1100 V	IS 694 : 1988
7	7846293	26-5-2009	Commander Electricals D-114, 115, Sreenath Indl.Estate, Survey No. 197, Vapi-Silvassa Road, Behind Voltas, Near Dadra Check Post, Dadra and Nagar Haveli, Dadra, Dadra and Nagar Haveli	Luminaries : Part 5 Particular requirements, Section 1 General Purpose luminaries	IS10322:Part 5:Sec 1: 1985
8	7850082	15-6-2009	Polution Protection Systems Mumbai Pvt Ltd. 226/212, Devendra Industrial Estate, Lokmanya Nagar, PadaNo. 2 Yasodhan Nagar, Thane(W) Maharashtra 400606	Flameproof enclosures for electrical apparatus	IS 2148 : 2004
9	7846697	27-5-2009	Jai Laxmi Wires & Cables Gala No. 2, Behind Mahesh Acid, Mahadev Compound, Near Jai Mata ji Compound, Greater Bombay, Uthasnagar, Maharashtra-421002	PVC insulated cables for working voltages upto and including 1100 V	IS 694 : 1990

1	2	3	4	5	6
10	7849201	8-6-2008	K. C. Powerwicks S. No. 185-1, Plot No. 7, Dakmardi Dadra and Nagar Haveli, Silvassa Dadra and Nagar Haveli-396230	PVC insulated (sheath type) electric cables: Part 3, 1, 2 working voltages up to and including 1100 V	IS 1554 : Part 1:1988
11	7852591	24-6-2009	Pavan Appliances Godown No. 9, K.V. Champand, T.J. Road, Opp Swan Mill Greater Bombay (Liquidizes and Grinders) Sector Maharashtra-400115	Specification for Domestic Electric Food-Mixer-	IS 4250 : 1980

[No. CMD 13 : 11]

P.K. GAMBHIR, Dy. Director General (Masks)

नई दिल्ली, 12 सितम्बर, 2008

क्र. आ. 2617.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) में अनुसूचन में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया गया है :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (को) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
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(1)	(2)	(3)	(4)
1	आईएस 2652 : 1976 लेक्लान्शे राइड प्राथमिक बैटरीयों के लिए टर्मिनल शेड्यूल (प्रथम पुनरीक्षण)	2 अगस्त 2008	31-8-2008

इन भारतीय संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, बृहन्नगर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कावपुर, पटना, रायपुर, रायपुर तथा तिरुवनन्तापुरम में भेजी हेतु उपलब्ध हैं।

[संदर्भ : टीडी 10 टी-13]

पी.के. मुखर्जी, वैज्ञानिक (इलेक्ट्रिक प्रेरण) (विद्युत तकनीकी)

New Delhi, the 12th September, 2008

S.O. 2617.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standard hereby notifies that the amendment to the Indian Standards particulars of which is given in the Schedule hereto annexed has been issued :-

SCHEDULE

Sl. No.	No. & Year of the Indian Standards amendment	No. & Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 2652 : 1976 Schedule of Terminals for Leclanche Type Primary Batteries (First Revision)	2 August, 2008	31-8-2008

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Tiruvananthapuram.

[Ref. E/F 10 T-13]

P. K. MUKHERJEE, Scientist I & Head (Electro-Technical)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 सितम्बर, 2008

का. अ. 2618.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में बाडीनार से मध्यप्रदेश राज्य में बीना तक कूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, बाडीनार-बीना कूड आयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टेण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

पड़ोसी : राजगढ़		जिला : राजगढ़		राज्य : मध्यप्रदेश	
क्र०	ग्राम का नाम	सर्वे नंबर		क्षेत्रफल हेक्टेयर में	
1	2	3		4	
1.	खजुरी	800		0.020	
		896		0.225	
		361/4		0.060	
		162/4		0.040	
2.	गुण्डिया खेड़ी	42		0.035	
		39/2		0.253	
3.	गोरखपुरा	327		0.377	
		238		0.100	
		91		0.024	
		108		0.040	
4.	किसनपुरिया	163		0.050	
5.	पीपल्हे पुरोहित	391/1		1.317	
		391/2			
6.	धोघड़िया कलौ	88		0.089	
		92		0.069	
		96		0.06	
7.	अम्ना	338/6		0.200	
8.	देवली कलौ	29		0.010	
		362/2/2		0.471	
		318		0.053	

क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में
1	2	3	4
8	देखली कला (नारंगी ...)	171/2	0.060
		53/1	0.055
		300	0.067
		138	0.050
		140	0.439
		171/2	0.060
9.	सावनखेड़ी	24/2	0.120
10.	रानीपुरा	15	0.070
		2/2	0.025
11.	गोल्यादे	208/1/4	1.040
12.	गोजपुरिया	1/4	0.153
13.	पाडल्याखेड़ी	361	0.250
14.	कल्योनी	404/1	0.050
		568	0.039
		748	0.010
15.	सिन्दुरिया	748	0.0100
		244/3	0.2100

[फा. सं. आर-31015/19-2008 -ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 15th September, 2008

S. O. 2018.— Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein:

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : RAJGARH

DISTRICT : RAJGARH

STATE : MADHYA PRADESH

S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	Khajuri	800	0.020
		898	0.225
		361/4	0.080
		162/4	0.040
2.	Tumadiya khedi	42	0.035
		39/2	0.253
3.	Gorakh pura	327	0.377
		238	0.100
		91	0.024
		108	0.040
4.	Kisan Puriya	163	0.050
5.	Piplabe Purohit	391/1	1.317
		391/2	
6.	Ghoghadiyakalan	88	0.089
		92	0.069
		96	0.08
7.	Amba	338/6	0.200
8.	Dewali kalan	29	0.010
		362/2/2	0.471
		318	0.053
		171/2	0.060
		53/1	0.055
		300	0.067
		139	0.050
		140	0.439
		171/2	0.060
9.	Savan kheda	24/2	0.120
10.	Rani pura	15	0.070
		2/2	0.025
11.	Gollabe	208/1/4	1.040
12.	Bhojpuriya	1/4	0.153
13.	Padliya khedi	361	0.250
14.	Kalponi	404/1	0.050
		568	0.039
		748	0.010
15.	Sinduriya	748	0.0100
		244/3	0.2100

नई दिल्ली, 15 सितम्बर, 2008

का. आ. 2619.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में वाडीनार से मध्यप्रदेश राज्य में बीना तक क्रूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, वाडीनार-बीना क्रूड आयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टेण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : झाबुआ		जिला : झाबुआ	राज्य : मध्यप्रदेश
क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में
1	2	3	4
1.	वालाखूंट	647	0.39
2.	मिटोल कर्ली	244	0.04
3.	पिनील खुर्द	28	0.04
		35	0.03
4.	खेडी	195	0.08
5.	मोद	142	0.06
		143	0.01
		145	0.17
6.	गैरखली	3	0.37
		100	0.72
7.	नरवाहिया	70	0.70
8.	खेवर	467	0.11
		476	0.02
		541	0.24
		612	0.13
		613	0.01
		617	0.16
		619	0.02
		812	0.12
		832	0.19
		895	0.08
		1359	0.08
9.	कलमणपुरा	240	0.10
10.	बरखेडा	392	0.50

New Delhi, the 15th September, 2008

S. O. 2619.—Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited; And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : JHABUA

DISTRICT : JHABUA

STATE : MADHYA PRADESH

S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	KALAKHUT	647	0.39
2.	PITOLKALA	244	0.04
3.	PITOLKHURD	28	0.04
		35	0.03
4.	KHEDI	195	0.08
5.	MOD	142	0.06
		143	0.01
		145	0.17
6.	GELARKALA	3	0.37
		100	0.72
7.	NARWALIA	70	0.70
8.	DHEBAR	467	0.11
		476	0.02
		541	0.24
		612	0.13
		613	0.01
		617	0.18
		619	0.02
		812	0.12
		832	0.19
		895	0.08
		1359	0.08
9.	KALYANPURA	240	0.10
10.	BARKHEDA	392	0.50

[No. R-31015/16/2008-O.R.-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 15 सितम्बर, 2008

का. आ. 2620.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में वाडीनार से मध्यप्रदेश राज्य में बीना तक कूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपावद्ध अनुसूची में वर्णित है, जिस्से उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितरद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, वाडीनार-बीना कूड आयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टेण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में अक्षेप भेज सकेगा।

अनुसूची

तहसील : आगरा		जिला : राजमपुर	राज्य : मध्यप्रदेश	
क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में	
1	2	3	4	
1.	बादनगांव	901	0.09	
		902	0.04	
		931	0.09	

New Delhi, the 15th September, 2008

S. O. 2620.—Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : AGAR		DISTRICT : SHAJAPUR	STATE : M.P.
S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	CHANDANGAON	901	0.09
		902	0.04
		931	0.09

[No. R-31015/24/2008-O.R.-II]
A. GOSWAMI, Under Secy.

नई दिल्ली, 15 सितम्बर, 2008

का. अ. 2621.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में वाडीनार से मध्यप्रदेश राज्य में बीना तक क्यूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए, यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपायद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, वाडीनार-बीना कूड ऑयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टैण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : लटेरी		जिला : विदिशा	राज्य : मध्यप्रदेश
क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में
1	2	3	4
1.	लटेरी	644	0.455
2.	सेमरी बशीर	24	0.036

[फा सं आर-31015/21/2008-ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 15th September, 2008

S. O. 2621.—Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : LATERI		DISTRICT : VIDISHA	STATE : MADHYA PRADESH
S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	LATERI	644	0.455
2.	SEMRI BASHIR	24	0.036

[No. R-31015/21/2008-O.R.-II]

A. GOSWAMI, Under Secy

नई दिल्ली, 15 सितम्बर, 2008

का. आ. 2622.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में वाडीनार से मध्यप्रदेश राज्य में बीना तक कूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, वाडीनार-बीना कूड आयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टेण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : नरसिपुर		जिल्ला : उज्जैन	राज्य : मध्यप्रदेश
क्र.सं.	ग्राम का नाम	सर्वे नम्बर	सेक्शनल डिस्टेंस में
1	2	3	4
1.	हरखेडी बजार	34	0.02
		63	0.09
		139/1	0.07

[फा. सं. आर-31015/26/2008-ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 15th September, 2008

S. O. 2622.—Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : MAHIDPUR		DISTRICT : UJJAIN	STATE : MADHYA PRADESH
S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	BARKHEDI BAZAR	34	0.02
		63	0.09
		139/1	0.07

[No. R-31015/26/2008-O.R.-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 15 सितम्बर, 2008

का. आ. 2623.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में वाडीनार से मध्यप्रदेश राज्य में बीना तक कूड आयल के परिवहन हेतु भारत ओमान रिफाइनरीज लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री अरविन्द खरे, सक्षम प्राधिकारी, वाडीनार-बीना कूड आयल पाइपलाइन परियोजना, भारत ओमान रिफाइनरीज लिमिटेड, 8/5, वैशाली नानाखेडा बस स्टेण्ड के पास, उज्जैन - 456010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : घटिया

जिला : उज्जैन

राज्य : मध्यप्रदेश

क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में
1	2	3	4
1.	झोकरा	110	0.08
2.	सुतारखेड़ा	144	0.09

[फ़. सं. आर-31015/25/2008-ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 15th September, 2008

S. O. 2623.—Whereas it appears to the Central Government that it is necessary in the public interest that for transportation of Crude Oil from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh should be laid by Bharat Oman Refineries Limited:

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri. Arvind Khare, Competent Authority, Vadinar-Bina Crude Oil Pipeline Project, Bharat Oman Refineries Limited, 8/5 "Vaishali", Near Nanakheda Bus Stand, Ujjain-456 010 (Madhya Pradesh).

SCHEDULE

TEHSIL : GHATIYA

DISTRICT : UJJAIN

STATE : MADHYA PRADESH

No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE
1	2	3	4
1.	ZOKRA	110	0.08
2.	SUTARKHEDA	144	0.09

[No. R-31015/25/2008-O.R.-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 15 सितम्बर, 2008

का. आ. 2624.—केंद्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 860 तारीख 16 अप्रैल, 2008, जो भारत के राजपत्र तारीख 19 अप्रैल, 2008 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में मध्यप्रदेश राज्य में मांगल्या (इंदौर) संस्थापन से हरियाणा राज्य में पियाला तथा दिल्ली राष्ट्रीय राजधानी क्षेत्र में बिजवासन तक पेट्रोलियम उत्पादों के परिवहन के लिए मुंबई-मांगल्या पाइपलाइन विस्तार परियोजना के माध्यम से भारत पेट्रोलियम कारपोरेशन लिमिटेड द्वारा एक विस्तार पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी ;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 24 जून, 2008 को उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन, केंद्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और केंद्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिये अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है ;

अतः अब, केंद्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है ;

और केंद्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख को केंद्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, भारत पेट्रोलियम कारपोरेशन लिमिटेड में निहित होगा ।

अनुसूची

तहसील : इन्द्रगढ़		जिला : बूंदी	राज्य : राजस्थान
क्र०	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हेक्टेयर में
1	2	3	4
1.	लबान	180	0.0344

[फा. सं. आर-31015/85/2004-ओ.आर II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 15th September, 2008

S. O. 2624.—Whereas by a notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O.860, dated the 16th April, 2008, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act) published in the Gazette of India dated the 19th April, 2008, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying an extension pipeline for transportation of petroleum products through Mumbai-Manglya Pipeline Extension Project from Manglya (Indore) terminal in the State of Madhya Pradesh to Piyala in the State of Haryana and Bijwasan in the NCT of Delhi by Bharat Petroleum Corporation Limited ;

And whereas the copies of the said Gazette notification were made available to the public on the 24th June, 2008;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government,

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the said land, specified in the Schedule, appended to this notification, is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration, in Bharat Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

TEHSIL: INDARGARH		DISTRICT: BUNDI		STATE: RAJASTHAN	
S.No.	NAME OF VILLAGE	SURVEY NO.	AREA IN HECTARE		
1	2	3	4		
1.	LABAN	180	0.0344		

[No. R-31015/85/2004-O.R.-II]
A. GOSWAMI, Under Secy.

नई दिल्ली, 16 सितम्बर, 2008

का. आ. 2625.— भारत सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय मध्य प्रदेश राज्य में मैसर्स गेल (इण्डिया) लिमिटेड द्वारा पाइपलाइन बिछाने के लिये उक्त अधिनियम के अधीन संलग्न सूची के कालम (1) वर्णित व्यक्ति को सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है।

अनुसूची

व्यक्ति का नाम और पता (1)	अधिकारिता का क्षेत्र (2)
श्री पी. के. भटनागर डिप्टी कलेक्टर, मैसर्स गेल (इण्डिया) लिमिटेड में प्रतिनियुक्ति पर गेल (इंडिया) लिमिटेड, गेल कॉम्प्लेक्स, विजयपुर जिला गुना पिन कोड : 473 112, मध्य प्रदेश	सम्पूर्ण मध्य प्रदेश राज्य

[का. सं. एल-14014/15/2005-जी.पी.]

के.के. शर्मा, अवर सचिव

New Delhi, the 6th January, 2005

s. O. 2625.— Whereas, in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Government of India hereby authorizes the person mentioned in column (1) of the schedule given below to perform the functions of the Competent Authority under the said Act for laying pipelines by the said M/s GAIL (India) Limited in the area mentioned in column (2) of the said schedule.

Schedule

Name and Address of the person	Area of Jurisdiction
Shri P.K. Bhatnagar, Deputy Collector, On deputation basis to M/s. GAIL (India) Limited, GAIL Complex, Vijaipur, Distt. Guna, 473 112 – Madhya Pradesh	Whole State of Madhya Pradesh.

[F. No. L-14014/15/2005-G.P.]
K.K. SHARMA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2008

का.आ. 2626.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 675 तारीख क्रमशः 24.03.2008 जो भारत के राजपत्र तारीख क्रमशः 29.03.2008 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गुजरात राज्य में मुन्द्रा से दिल्ली तक पेट्रोलियम उत्पादों के परिवहन के लिए मुन्द्रा-दिल्ली पेट्रोलियम उत्पाद पाइपलाइन के माध्यम से हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी।

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 23.06.2008 को उपलब्ध करा दी गई थी।

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को रिपोर्ट दे दी है।

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जान पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए, इस मंत्रालय के सहमति पत्र सं. आर-31015/7/03 ओ. आर-11 दिनांक 25.11.2004 द्वारा लगाई गई शर्तों के अध्वधीन सभी वित्तलंगमों से मुक्त, हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील: बर्डोद		जिला: अलवर	राज्य: राजस्थान		
क्र.सं.	गाँव का नाम	खसरा सं.	क्षेत्रफल		
			हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6
1	बर्डोद	808	0	04	56
		809	0	07	09
		613	0	14	22
		614	0	03	06

[फा. सं. आर-31015/73/2004-ओ.आर.-II]

New Delhi, the 18th September, 2008

S. O. 2626.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas, S.O. Nos. 675 dated 24.03.2008 in the Schedule below issued under Sub-Section (1) of Section 3, Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated 29.03.2008 respectively the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline through Mundra - Delhi Petroleum Product Pipeline for transportation of petroleum products from Mundra in the state of Gujarat to Delhi by Hindustan Petroleum Corporation Limited.

And whereas copies of the said Gazette notification were made available to the public on the 23.06.2008;

And whereas the competent authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government;

And whereas the Central Government after considering the said report and on being satisfied in the Schedule appended to this notification is hereby acquired for laying the pipeline;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of publication of the declaration, in Hindustan Petroleum Corporation Limited, free from all encumbrances, subject to the conditions imposed vide this Ministry's consent letter No. R-31015/7/03 OR-II dated 25.11.04.

Schedule

Tehsil: Behror		District Alwar	State: RAJASTHAN		
Sr. No.	Name of the Village	Khasara No.	Area		
			Hectare	Are	Sq.Mtr
1	2	3	4	5	6
1	Bardod	808	0	04	56
		809	0	07	09
		613	0	14	22
		614	0	03	06

[No. R-31015/73/2004-O.R.-II]

A. GOSWAMI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 12 अगस्त, 2008

का.आ. 2627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी.एल. लि., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय सं-1, धनबाद के पंचाट (संदर्भ संख्या 73/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-8-08 को प्राप्त हुआ था।

[सं. एल-24012/144/87-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 12th August, 2008

S.O. 2627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/1988) of the Central Government Industrial Tribunal-cum-Labour Court No-1, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL Ltd. and their workman, which was received by the Central Government on 12-08-2008.

[F. No. L-24012/144/87-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1 AT DHANBAD****PRESENT**

Shri H. M. Singh, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 73 of 1988

PARTIES :

Employers in relation to the management of Bhowra (South) Colliery of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : None
On behalf of the employers : Mr. U. N. Lal,
Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 22 July, 2008

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(144)/87-D.IV(B) dated, the 18th March, 1988.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union that the Management of Bhowra (South) Colliery of Bhowra Area No. XI of M/s. BCC Ltd., P.O. Bhowra (Dhanbad) should provide original jobs of Dragman in Hard Coke Bhatta and pay House Rent Allowance and refund Long Leave Travel Concession to S/Sri Lattan Bhuiya and Sitwa Bhuia is justified? If so, to what relief are the workmen concerned entitled?"

2. It appears from the record of this case that both the parties have appeared and filed their respective W.S. documents etc. The case thereafter proceeded along its course. Subsequently the workmanside abstained themselves from appearing before this Tribunal for taking further steps in this case, though repeated notices were issued to them. Therefore, there is reason to believe that the workmanside are not interested to proceed with the hearing of this case. Under such circumstances a 'No dispute' Award is passed in this reference presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 12 अगस्त, 2008

का.आ. 2628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. एयर इंडिया लि., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 121/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-8-08 को प्राप्त हुआ था।

[सं. एल-11012/34/2005-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 12th August, 2008

S.O. 2628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/2008) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Air India Ltd. and their workman, which was received by the Central Government on 12-08-2008.

[No. L-11012/34/2005-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Thursday, 10th July, 2008

Present: K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 121/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between

the Management of Air India Ltd. and their workman]

Between

The Secretary, I Party/Petitioner
Chennai Airport Contract Workers Union
13, First Street, Balaji Nagar,
Ankaputhur, Chennai-600 0700.

Vs.

The Sr. Manager-HRD II Party/Management
Air India Ltd
Air India Unity Complex
Pallavaram, Chennai-600 043

APPEARANCE:

For the Petitioner : M/s. Balan Haridas
For the Management : Ms. Aiyar & Dalia

AWARD

The Central Government, Ministry of Labour vide its Order No. L-11012-35/2005-[R(CM-D)] dated 09-12-2005 referred the following Industrial Dispute to this Tribunal for adjudication:

The schedule mentioned in that order is:

"Whether the demand of Chennai Airport Contract Workers Union from the Management of Air India that Sri V. Selvan, Plumber, recruited through M/s. Blessing Constructions may be regularized by M/s. Air India into their service, justified? If so, to what relief is the workman entitled and from what date?"

2. After the receipt of the Industrial Dispute, this Tribunal has numbered it as ID 121/2005 and issued notice to both sides. Both sides entered appearance through their Advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations in the Claim Statement are briefly as follows:

The Petitioner Union espouses the cause of one Sri Selvan, a Plumber who joined the service of the Respondent Management organization in the year 1985. Even though, it is alleged that he was a contract labour, he was engaged only by the Respondent Management, M/s. Blessing Constructions, the so-called Contractor is only a name lender. The concerned employee is the only Plumber employed by the Respondent Management to replace and maintenance of entire plumbing system in all the structures owned and maintained by the Respondent Management at Chennai Airport. The Respondent Management, Air India does not have any other plumber either as contract worker or as regular workman. But instead of giving him regular status as Plumber, the Respondent Management is keeping the concerned employee as so-called contract worker under

a benami name lender for the past 21 years. The concerned employee worked from 9-00 AM to 7-00 PM. The work of the concerned employee was controlled and supervised by the Dy. General Manager (Technical) of the Respondent Management. The supervision and control is only with the Respondent Management. Even if the concerned employee wants to take any leave for a day, the same is informed to the Dy. General Manager (Technical) and only if he accords permission, the concerned employee can go on leave. Thus, the concerned employee is only under their direct control and supervision and executes the work. The concerned employee executes the work at various offices of the Respondent Management viz. at Meenambakkam, Tirusulam and Egmore. The Respondent Management maintains a separate Attendance Register for the concerned employee. The Respondent Management deducts Provident Fund (PF) amounts from the salary of the workman and is also paid bonus by the Respondent Management every year. Even though, the entire payment of salary is directly under the control the Respondent Management, the Contractor is kept as an intermediary for making the payment and the work discharged by the concerned workman is perennial and continuous in nature. For the past 21 years, the Respondent Management is denying him the regularization under the specious plea that the petitioner is a contract employee. Therefore, the so-called contract with M/s. Blessing Constructions for the engagement of the concerned workman is sham and nominal. Therefore, engaging the concerned workman for the permanent work of plumbing which is continuous and perennial in nature is to deny the benefits of regularization is an unfair labour practice. The concerned employee has also completed 480 days of continuous service in 24 calendar months even in the year 1987, therefore, under Section-3 of the Tamil Nadu Conferment of Permanent Status to Workman Act, the concerned workman is entitled to be made permanent and deemed to have attained the status. Hence, the petitioner Union prays that the concerned employee's service may be regularized with consequential relief from the date of his completion of 480 days.

4. As against this, the Respondent Management in its Counter Statement alleged the concerned employee viz. Sri. V. Selvan is only a contract workman attending the minor plumbing works like replacing of taps, Arresting of leakages, replacement of plumbing fittings etc. However, if there is any major plumbing work in the Respondent Management, the same could be awarded to some contractor after following the tender procedure adopted in the Respondent Management. Therefore, there is no connection or nexus between the above said concerned workman and the Respondent Management. The contract between the Respondent Management and M/s. Blessing Constructions is still subsisting and Contractor viz. M/s. Blessing Constructions is free to have carried on by

workman of his choice and the activities of the contract workman are controlled by M/s. Blessing Constructions. The concerned employee is an employee of M/s. Blessing Constructions and, therefore, there is no master-servant relationship exist between the Respondent Management and the concerned employee. The wages were paid to the concerned employee only by the Contractor. The contract given to M/s. Blessing Constructions was for a period of one year and it was further extended subsequently. No. doubt, the Respondent Management's officials still make periodical checks of the work carried out by the concerned employee and it is also countersigned in the Log Book maintained in which the details of the work carried out are entered. But on that ground, it cannot be said that the control and supervision is with the Respondent Management. The Respondent Management, no doubt, maintains a Register but the said Register was maintained only for the issue of materials for carrying out the work by the Contractor herein. The Respondent Management holds a valid registration certificate under the Contract Labour (Regulation & Abolition) Act but there is no statutory or other legal obligation or compulsion to employ a Plumber by the Respondent Management. Therefore, the demand for regularization by the Petitioner Union is unsustainable and they are not entitled to any relief. The Petitioner Union has also no locus-standi to espouse the cause of the contract workman in as much as the contract workman has not given any authorization to the Petitioner Union to represent him. The Respondent Management has got separate Recruitment Rules and if any vacancy arises in the Respondent Management in future, the concerned employee can apply and if he fulfills the eligibility criteria in Educational Qualification and Technical Qualification, Work Experience, Age, Community Status as per precedential directive, he may be considered. Hence, for all these reasons, the Respondent Management prays that the claim may be dismissed with costs.

5. Points for determination are :

- (i) Whether the demand of the Petitioner Union that Sri V. Selvan, concerned employee recruited through M/s. Blessing Constructions may be regularized by the Respondent Management into their service is justified?
- (ii) To what relief the concerned workman Sri V. Selvan is entitled?

6. The Petitioner Union espouses the cause of one Sri Selvan who is working as a Plumber in the Respondent Organization for regularization. The contention of the petitioner is that the concerned employee Selvan has been working in the Respondent Management from the year 1985 through the so-called Contractor and even though the Contractors have changed from time to time, the concerned employee continued to work in the Respondent Management. It is his further contention that the

Respondent does not have any other Plumber either as contract worker or as regular workman since the plumbing work is a continuous work and perennial in nature, the Respondent cannot employ contract worker for number of years and that too for more than 21 years. Instead of giving the concerned employee the regular status as Plumber, the Respondent is keeping him as so-called contract worker under a benami name lender for the past 21 years. On behalf of the petitioner, it is further alleged that the concerned employee reports for work in the general shift and he works from 9.00 AM to 7.00 PM. His work is under the control and supervision of Dy. General Manager (Technical) of the Respondent Management. The Respondent officials directs the petitioner to work and only under their supervision and control the entire work of the petitioner takes place. Even if the petitioner wants to take leave for a day, the same is to be informed to the Dy. General Manager (Technical) and only if he accords permission, the petitioner can go on leave. The manner of execution of the work is only with the Respondent officials who will give directions everyday and only under their direct control and supervision the petitioner executes the work. Therefore, even if the concerned workman is termed as contract employee in substance he is working only under the direct control and supervision of the Respondent Management and the so-called Contractor is only a name lender only engaged for the purpose of making payment of salary. Thus, the so-called contract with the Contractor for engagement of the concerned workman is sham and nominal. But on behalf of the Respondent, it is contended that the concerned employee, no doubt doing plumbing work but he is only a contract workman attending to minor plumbing works like replacement of taps, arresting of leakages and replacement of plumbing fittings. Further, there is no prohibition to employ contract worker for such works, under such circumstances, it cannot be said that the contract entered into with the Contractors for this minor plumbing work is sham and nominal. It is also false to contend that the control and supervision of the work of the concerned employee is with the Respondent Management and there is no master-servant relationship existing between the Respondent Management and the concerned employee. No doubt, the contract to plumbing work was given for 1 year and it was extended for further years but it is not known to the Respondent Authorities whether the Contractor has engaged the particular person for plumbing work as such. Even though, the concerned employee was engaged by the Contractor and even though the Contractor has changed year after year, it cannot be said that the concerned employee is to be regularized in the service of the Respondent Management. It is further contention of the Respondent that the Respondent Authority has got separate rules and regulations for recruitment and they have also separate procedure for recruitment of regular employees, there is no statutory or other legal obligation or compulsion to employ a Plumber by the Respondent

Management, therefore, the demand of regularization is unsustainable and, therefore, the concerned employee is not entitled to get any relief. In order to establish his case that the petitioner is working in the Respondent Management, the petitioner has examined himself as WW1 and produced Ex. W1 to Ex. W6, Ex. W1 is the copy of the for requisition of extension of validity of the concerned employee's photo pass from 1985 to 1991. Ex. W2 is the copy of the application for issuance of photo pass from the period 2004-2006 and Ex. W3 is the copy of the entry permit of the concerned employee from the period 2003-2004. Ex. W4 is the copy of the Wage Register for the month of August 2005 and Ex. W5 is the copy of the Wage Register for the month of September 2005 and Ex. W6 is the copy of the registration for properties and facilities department for the Plumbing Section. By producing these documents, the concerned employee has stated that he worked in the Respondent Management from 9.00 AM to 7.00 PM and he worked under the supervision and control of Dy. General Manager (Technical) and the so-called Contractor will never interfere with his work and he has never come to the work spot. It is his further evidence that he is only Plumber who is engaged by the Respondent through the so-called Contractor who is only a name lender. The Respondent Management alone deducted the PF amounts from his salary and he was paid bonus by the Respondent Authorities. The so-called Contractor is kept as an intermediary for making the payment of wages and he never directs or supervises the work. Thus, he has been working for more than 21 years under the Respondent Corporation and thus he has acquired the necessary knowledge, expertise in the field and he is fully qualified to be employed as a Plumber in the Respondent Corporation. On behalf of the petitioner it is contended the concerned employee is now 45 years old and he is overaged to get employment in any other establishment and at this distance and time if his services are not regularized under the specious ground that his employment is only through the Contractor, then he will be put to great hardship and irreparable loss would be caused to him. As against this on the side of the Respondent, one Revathi Gopalan who is the Asstt. Manager (HRD) of the Respondent Management was examined as MW1 and though one Ayyaswami was examined as MW2 and though the Respondent Management has marked Ex. M24 to Ex. M30 through the said witnesses, the said witness was not present for cross-examination and, therefore, it is argued by the petitioner that his evidence should not be considered for this case. It was recorded as such and on that score, his evidence was not considered for the trial in this case. On the side of the Respondent, 30 documents were marked. Out of that Ex. M24 to Ex. M30 were marked through one Ayyaswami and was not present for cross-examination and, therefore, not considered. Ex. M1, Ex. M2 are the copies of the certificate of registration given by the labour authorities under Contract Labour (Regulation and Abolition) Act and Ex.

M3, Ex. M7 and Ex. M14 are the copies of the contract given to the Blessing Constructions for plumbing contract and extension of the contract. Ex. M4, Ex. M8, Ex. M10, Ex. M12, Ex. M15, Ex. M17, Ex. M19 and Ex. M21 are the copies of the bills raised by the said Contractor M/s Blessing Constructions, Ex. M5, Ex. M9, Ex. M11, Ex. M13, Ex. M18, Ex. M20 and Ex. M22 are the copies of the payment made by the Respondent Authority to the Contractor, Ex. M6 is the copy of the ESI Remittance for May and June, 2004 and the witness examined on the side of the Respondent viz. the Asstt. Manager (HRD) deposed that the concerned employee was employed under M/s. Blessing Constructions, Contractor and the contract entered into between the Respondent Management with the Blessing Constructions is genuine and the concerned employee was not under the direct control and supervision of the Respondent Management. The concerned employee was doing minimum plumbing work and they paid wages to the concerned employee directly and there is no sanctioned post in their Department as "Plumber" and the concerned employee was supervised only by the Contractor and not by the Respondent Management. It is her further evidence in case a regular post has been sanctioned for plumbing work, they have to follow the recruitment procedure for that appointment. It is her admission in the cross-examination that from the year 1985 the minor plumbing work were done by one Plumber though they have given plumbing contract to various persons. This witness, though, has stated that the concerned employee is only a contract employee, she has stated in the cross-examination that she did not know whether anybody from the Contractors concerned has come to the Airport or not and she further stated that she did not know personally the plumbing work done by the concerned employee in the Respondent's premises. With this evidence, the learned counsel for the Petitioner contended that though the Respondent Authorities have produced a copy of the contract and also the copy of the bill and termed the control and supervision is only with the Respondent Authorities and the so-called Contractor never entered into the premises of the Respondent and supervised the work of the concerned employee. It is further argued that such a big concern viz. Air India has not employed a regular staff for plumbing work which is continuous and perennial in nature though it is admitted by them that the concerned employee is working from the year 1985 and though it is proved that he is working from 9.00 AM to 7.00 PM round the clock, the Respondent Authorities have not taken any step to regularize his services on the ground that there is no regular post for Plumber. It cannot be said that the work of plumbing is sporadic, it is continuous and perennial in nature, under such circumstances, the Respondent Authorities is denying the regularization only to deny the benefits to the concerned employee. He further relied on the ruling reported in 2000 SCC (L&S) 884 GB PANT UNIVERSITY OF AGRICULTURE & TECHNOLOGY, PANTNAGAR.

NAINITAL VS. STATE OF UP AND OTHERS wherein "the appellants University which is a residential university had 14 hostels and a Cafeteria to provide food services to the hostels and others. There were 175 employees working in that Cafeteria when these employees claimed regularization of their services as employees of the University. The Labour Court declared them to be regular employees of the University from the date of the award and held them entitled to receive the same salary and other benefits as the other regular employees of the university. Even the High Court in the Writ Petition upheld the Labour Court's award. When the matter came up before the Supreme Court the University contended it was only the Food Committee and not the University which had a role in the matter and control of the Cafeteria and the employees of the Cafeteria were not appointed by the University and that there was no budgetary allocation in the budget of the University to meet the expenses of the salaries of the Cafeteria employees and further contended that the employees of Cafeteria were not the employees of the University but the Supreme Court dismissed their contention. The two conventional tests of implicit obligation and factors of overall control and supervision by the University stands satisfied and the legal responsibility cannot be shifted as contended by the University and regularized their services".

7. But as against this, the learned counsel for the Respondent contended in 2006 4 SCC 1 **SECRETARY, STATE OF KARNATAKA VS. UMADEVI AND OTHERS**, the Supreme Court has clearly stated "the High Courts and Supreme Court should never issue directions for regularization, permanent continuation or absorption without referring to the legal position obtaining thereby, and which have been relied on by the respondent employees to claim the same relief..... It further held "persons who get employed without the following of a regular procedure or even through the backdoor or on daily wages have been approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned and the courts have occasionally even stayed the regular process of employment being set in motion and in some cases even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment" has risen like a phoenix seriously impairing the constitutional scheme..... it is not as if the person who accepts an engagement either temporary or casual in nature is not aware of the nature of his employment. He accepts the employment with wide open eyes. It may be true that he is not in a position to bargain not at arm's length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that alone, it would not be appropriate to jettison the constitutional scheme of

appointment, perpetuate illegalities and to take the view that a person who was temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public employment which is not permissible". The Supreme Court further observed "the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. thus, when there is no sanctioned post and when there is no provision to employ a contract labour. In this case merely because the concerned employee was worked for more number of years, it cannot be contended that his services should be regularized in the Respondent Management. Though, I find much force in the contention of the learned counsel for the Respondent. Again the learned counsel for the petitioner relied on the ruling reported in recent judgement of the Supreme Court in CDJ 2007 SC 1133 **UP STATE ELECTRICITY BOARD VS. POORAN CHANDRA PANDEY AND OTHERS** wherein the Supreme Court had as an occasion to consider Umadevi's case and held "learned counsel for the Respondent has relied upon the decision of this Court in *Secretary, State of Karnataka and Others Vs. Umadevi* 2006 4 SSC 1 and has ruled that no direction for regularization can be given by the Court. Further, the decision in *Umadevi's* case is clearly distinguishable. The said decision cannot be applicable to a case where regularization has been sought for in pursuant to Article 14 of the Constitution..... Hence in our opinion *Umadevi's* case cannot be applied mechanically without seeing the facts of a particular case as a little difference in fact can make *Umadevi's* case inapplicable to the facts of that case". The learned counsel for the petitioner contended that in this case the petitioner has produced documents to show that from the year 1985 he has worked as a Plumber in the Respondent Management and there was no other Plumber either contract labour or regular workman as a Plumber in the Respondent Authority and though all along the Respondent Authority has treated him as contract labour but it is only the Respondent Authorities who has supervised the work of the concerned employee and controlled the said person. Under such circumstances, it is clear the prayer for regularization is to be given to the concerned employee.

8. I find much force in the contention of the learned counsel for the petitioner because in this case a big concern like Air India has employed the concerned employee for more than 21 years for their continuous and perennial work of plumbing but for wage, a Contractor was engaged as an intermediary for the payment of salary alone. On the other hand, the control and supervision of the concerned employee is with the Respondent Authorities. Since the Plumber work of the buildings of the Respondent Authority

was done only by the concerned employee and without his work, the plumbing was not done by any other person. under such circumstances, I am of the opinion that this is a fit case for regularization of services of the concerned employee. As such, I find this point in favour of the Petitioner Union.

Point No. 2

The next point to be decide in this case is to what relief the concerned employee is entitled to?

9. In view of my findings that the demand of the Petitioner Union to regularize the services of the petitioner is justified. The prayer of the Petitioner Union is to be allowed. The next thing to be decided is from which date regularization has to be given. Since the Petitioner Union has raised this dispute only in 2005, I find his services is to be regularized from the date of award.

10. Thus the reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th July, 2008)

K. JAYARAMAN, Presiding Officer

Witness Examined.

For the 1st Party/Petitioner : WW1 Sri V. Selvan

For the 2nd Party/Petitioner : MW1 Smt. Revathi
Gopalan
MW 1 Sri S. Jyyswami

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex. W1	-	Request for extension of validity of petitioners photo pass from the period from 1985 upto 1991
Ex. W2	-	Applications for issuance of photo pass from the period from 2004 up to 2006
Ex. W3	-	Entry permit of the petitioner from the period 2003 upto 2004
Ex. W4	Aug. 2005	Wage Register
Ex. W5	Sept. 2005	Wage Register
Ex. W6	-	Copy of the registration for properties and facilities department for the Plumbing Section.

On the Management's side

Ex.No.	Date	Description
Ex. M1	26-03-2001	Copy of the certificate of registration given by the labour authorities under Contract Labour (Regulation & Abolition) Act.
Ex. M2	09-12-1986	Copy of the certificate of registration given by the

Ex.No.	Date	Description
Ex. M3	19-09-2003	labour authorities under Contract Labour (Regulation & Abolition) Act.
Ex. M4	01-07-2004	Contract given to the 2nd Respondent for the period 01-10-2003 to 30-09-2004.
Ex.M5	03-07-2004	Bill raised by the 2nd Respondent
Ex.M6	29-06-2004	Payment made by the 1st Respondent
Ex.M7	02-09-2004	ESI Remittance (May, 2004 to June 2004)
Ex. M8	01-10-2004	Extension of contract from 1-10-2004 to 30-09-2005
Ex.M9	11-10-2004	Bill raised by the 2nd Respondent
Ex. M10	01-02-2005	Payment made by the 1st Respondent
Ex.M11	02-02-2005	Bill raised by the 2nd Respondent
Ex. M12	01-04-2005	Payment made by the 1st Respondent
Ex.M13	04-04-2005	Bill raised by the 2nd Respondent
Ex. M14	26-09-2005	Payment made by the 1st Respondent
Ex. M15	05-12-2005	Contract given to the 2nd Respondent form 1-10-2005 to 30-09-2006.
Ex.M16	05-12-2005	Bill raised by the 2nd Respondent
Ex. M17	01-02-2006	Payment made by the 1st Respondent
Ex.M18	01-02-2006	Bill raised by the 2nd Respondent
Ex. M19	03-04-2006	Payment made by the 1st Respondent
Ex.M20	04-04-2006	Bill raised by the 2nd Respondent
Ex. M21	01-06-2006	Payment made by the 1st Respondent
Ex.M22	02-06-2006	Bill raised by the 2nd Respondent
Ex.M23	29-07-2005	Payment made by the 1st Respondent
Ex.M24	27-04-2001	IO between Air India and Blessing Constructions and Chennai Airport Contract Workers Union regularization of Mr. V. Selvan.
		Letter from Employers Federation of India reg. EPF.

Ex.M25	22-11-2001	Letter from 1st Respondent to the Commissioner, EPF.
Ex.M26	21-01-2002	Letter written by 1st Respondent regarding applicability of provisions of EPF to casuals at Chennai.
Ex.M27	03-03-2007	Letter written by 1st Respondent regarding applicability of provisions of EPF to casuals at Chennai.
Ex.M28	02-11-2006	Letter from 2nd Respondent requesting to release PF/ Bonus.
Ex.M29	03-11-2006	Stamped Receipt from Mr. Selvam.
Ex.M30	03-11-2006	Letter from 1st Respondent to Manager (Finance) for refund of Bonus to Mr. Selvam.

नई दिल्ली, 12 अगस्त, 2008

का.आ. 2629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. जेट एयरवेज लि., के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय सं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/54/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-8-2008 को प्राप्त हुआ था।

[सं. एल-11012/34/2003-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 12th August, 2008

S.O. 2629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/54 of 2003) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Jet Airways Ltd. and their workmen, which was received by the Central Government on 12-08-2008.

[F. No. L-11012/34/2003-IR(C-1)]
SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.2, MUMBAI PRESENT

A. A. Lad, Presiding Officer

REFERENCE No. CGIT-2/54 of 2003

Employers Relation to the Management of M/s. Jet Airways

The General Manager (HR)
M/s. Jet Airways (I) Pvt. Ltd.
41/42, Maker Chambers-III,
Nariman Point, Mumbai-400021

And Their Workmen

The General Secretary
Bhartiya Kamgar Karamchari Mahasangh
9, Navalkar Lane, 1st Floor,
Prarthana Samaj, Girgaum,
Mumbai-400004

APPEARANCES:

For the Employer : Mr. Abhay Kulkarni,
Advocate
For the Workmen : Mr. A. P. Kulkarni,
Advocate.

Mumbai, Dated, 26th June, 2008

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No. L-11012/34/2003-IR(C-1) dated 22-08-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Jet Airways (India) Pvt. Ltd., to dismiss Shri Sunil Sonu Satale, JA/2453/BOM from service w.e.f. 7-8-2002 is legal and justified? If not, to what relief is the workman entitled?"

2. Claim statement is filed at Ex-6 by the union making out case that, concerned workman Sunil Sonu Satale joined first party as a Labour-cum-Cleaner in Cabin Appearance Department on 05-05-1993. He was served with chargesheet dated 01-12-2001 on allegation of absenteeism without permission or sanction. The allegation levelled against concerned workman was absence without sanction of the first party. The allegations in the chargesheet are cooked up by first party against concerned workman. No opportunity was given to concerned workman to explain about his absenteeism. The Inquiry Officer was biased. He gave perverse findings and he did not consider the documents given by second party. The misconduct of absenteeism was not of that serious nature to remove the employee from employment. The decision taken by first party was taken just to remove the workman from the employment. So it is submitted that, the enquiry shown conducted against concerned workman be declared not fair and proper and findings perverse on which basis he was terminated.

3. This is disputed by first party by filing reply Ex-8 making out case that, reference is not maintainable. It is stated that, concerned workman was taken as Loader-cum-Cleaner in Cabin Appearance Department. He did not perform his duties satisfactorily. He was not punctual in work. By charge sheet dated 01-12-2001, charge of 40 days absenteeism between the period 01-06-2001 to 30-09-2001 was levelled against him. Enquiry was conducted by following Principles of Natural Justice and by giving full opportunity to workman. Even opportunity was given to concerned workman to make his submission and put up his defence. He was also allowed to lead evidence and after considering the evidence, the Inquiry Officer gave findings holding him guilty of misconduct of absenteeism.

Since concerned workman was not interested in the work and was in habit of remaining absent unauthorised frequently, it is submitted that, dismissal issued against him does not require interference.

4. Union filed rejoinder at Ex-10 which deny the allegations of First party.

5. In view of above pleadings, issues were framed at Ex-17 of which issues nos. 1 & 2 are treated as preliminary issues which are answered as follows:

Issues	Findings
(i) Is enquiry fair and proper?	Enquiry is fair and proper.
(ii) Is finding perverse?	Findings not perverse

Reasons

Issue no. 1 :

6. Second party has challenged the enquiry stating that, enquiry was not fair and proper whereas first party made out case that the concerned workman was given opportunity to lead evidence and participate in the enquiry. To support that second party examined the workman concerned at Ex-18 who make out griveneances as stated above. In the cross he states that, he was given charge sheet dated 1-12-2001. He unable to state whether he gave detailed reply or not. He admits that, Inquiry Officer gave time to file reply. He admits that, opportunity was given to take representative of his choice. He further states that, he did not demand any particular representative since he was not having idea that he can demand so. He states that, people were talking in Marathi in the enquiry but he has no idea in which language proceeding was written. He admits that, proceeding was explained to him. He admits that all documents were served on him. He admits that, he had not demanded any other document. He admits that, he had no idea to cross-examine the witnesses. He admits that, he was absent during the period mentioned in the charge sheet. He states that, he has filed documents on that but his case is that those were not considered by the Inquiry Officer. He states that, he has not cross-examined witness because he had no idea that he can do like that. He admits that he has no complaint about enquiry and he closed evidence by filing purshis Ex-19. Against that, first party chose not to lead evidence on point of enquiry and perversity of findings.

7. Second party submitted Written Arguments at Ex-20 and first party at Ex-21. If we peruse enquiry proceedings filed at Ex-13 by the first party we find, said enquiry proceeding runs from page 1 to 39. In the copy of enquiry proceedings at number of places we find signature of the workman. In the cross this witness at page 10 and 11 admits that, he has no evidence to show that he informed about his absenteeism. Even he admits that, salary was not paid to him of these absent days. He also admits that, he did not complain about salary deducted about absenteeism. Charge sheet shows he remained absent for 40 days from June, 2001 to September, 2001. He has admitted that position. In the reply to the charge sheet, it appears that he has informed that when he was sick from 14th to 16th June he

noted his brother's daughter Priyanka fell sick and so he had to take her to hospital. There was no improvement and so he unable to attend the office as nobody was in the house to take care of Priyanka. Then about August absenteeism he states that, he received one notice from Dy. Collector Office, Mulund and to attend it he went there. So by that reply, he almost admitted absenteeism. He has also not examined any witnesses on his behalf though he produced number of copies of case papers of Priyanka. He got opportunity to explain about his absenteeism and by enquiry it reveals that, sufficient opportunity was given to second party to explain about his absenteeism. Even in cross he admitted enquiry. He admits that, opportunity was given to him. So charge of absenteeism when levelled against second party and when he admits it, in my considered view nothing more required to prove. Besides citation referred by first party's Advocate if looked in, I find those are on punishment which cannot be considered at this stage. While answering question no. 4 in the enquiry proceeding, page 10 Ex-15, he admits that he has not submitted leave application and admits that, he informed on telephone. When date was asked of telephone he states that, he does not remember the date. While answering Question no. 10 page 11 of enquiry proceedings he admits that, he remained absent for 40 days. When he admits that, he remained absent for 40 days and when charge of absenteeism is levelled as for misconduct, in my considered view, nothing more required to conclude that, charge was proved against concerned workman. After all, what is enquiry? According to me, enquiry is opportunity to the person against whom charges are levelled. Here concerned workman admits that he was absent. Charge was of absenteeism treating as a misconduct when is admitted by the concerned workman. I conclude that, enquiry is fair and proper and answer this issue in the affirmative.

Issue no. 2 :

8. On the basis of enquiry conducted, Inquiry Officer observed he is guilty of misconduct of absenteeism. He has given findings from page 41 to 44 with Ex-13. He has described the charge mentioned in the statement made by concerned workman and explanation given by concerned workman. The charge was of absenteeism treating as misconduct from June 2001 and on that Inquiry Officer observed concerned workman guilty of charge of absenteeism. When charge was admitted by the concerned workman and it is proved that he was absent during that period as mentioned in charge sheet. I have to conclude that findings are not perverse.

9. In view of discussions made above, I conclude enquiry is fair and proper and findings not perverse. Hence the order:

ORDER

(I) Enquiry is fair and proper. Findings not perverse.

(II) Both to participate in the reference on quantum of punishment.

Date: 26-06-2008

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. ई.सी.एल. लि. के प्रबंधन के संबद्ध नियोक्ताओं और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ सं. 32/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2008 प्राप्त हुआ था।

[सं. एल-20012/452/95-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/1997) of the Central Government Industrial Tribunal/Labour Court, No. 1, Dhanbad now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. ECL's Ltd. and their workman, which was received by the Central Government on 13-08-2008.

[No. L-20012/452/95-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

PRESENT

Shri H.M. SINGH, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d)
of the I.D. Act., 1947

Reference No. 32 of 1997

PARTIES: M/s. ECL's Barakar
Engineering works and their
workmen.

APPEARANCES

On behalf of the workmen : None.
On behalf of the employers : Mr. B.M. Prasad,
Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 29th July, 2008

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/452/95-IR (Coal-I), dated, the 14th January, 1947.

SCHEDULE

"Whether the demand by the Union for the employment of the dependent of Late Brahmadeo Singh is legal and justified? If so, to what relief is the dependent entitled?"

2. In this case neither the concerned workman nor his representative appeared before this Tribunal inspite of issuance of notices to them. Management, however, made appearance through their authorised representative.

Since the concerned workman has failed to appear before this Tribunal inspite of issuance of notices, a 'No Dispute' Award is passed in this case presuming non-existence of any Industrial Dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. आई.बी.पी. कम्पनी के प्रबंधन के संबद्ध नियोक्ताओं और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 24/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2008 को प्राप्त हुआ था।

[फा. सं. एल-300012/79/98-आईआर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/1999) of the Central Government Industrial Tribunal/Labour Court Kolkata now as shown in the Annexure, in Industrial Dispute between the employers in relation to the management of M/s. IBP Company and their workman, which was received by the Central Government on 13-08-2008.

[No. L-300012/79/98-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA**

Reference No. 24 of 1999

**PARTIES: EMPLOYERS IN RELATION TO THE
MANAGEMENT OF IBP COMPANY****AND**

Chittaranjan Nath

PRESENT:**Mr. Justice C.P. MISHRA, Presiding Officer****APPEARANCES**On behalf of the : Mrs. S. Banerjee, Advocate.
ManagementOn behalf of the : None.
Workman

State : West Bengal. Industry : Petroleum

Dated : 29th July, 2008.

AWARD

By Order No. L-300012/79/98-IR (C-1) dated 06-07-1999 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the demand of Sri Chittaranjan Nath that he had worked in IBP Company from 06-05-1991 to 31-03-1996 is correct? If so, whether termination of his service w.e.f. 01-04-1996 is legal and justified? If not, what relief he is entitled to?"

2. When the case is called out today, none appears for the workman nor any step is taken on his behalf to proceed with the reference. Management, however, is represented by its learned Advocate, who has stated that from the conduct of the workman it is clear that he has lost his interest in this case. He has prayed for disposal of the reference by passing a "No Dispute" Award. It appears from the record that the parties have completed their pleadings and the workman was to lead evidence. But, instead of doing so adjournments was being taken from time to time on various grounds. Ultimately, from 14-6-2005 the learned Advocate on record for the workman stopped appearing. Several notices were issued to the workman informing him about the date fixed for his evidence, but those notices were all returned with the endorsement of the postal authority as not claimed. It is, therefore, clear that the workman is no longer interested to proceed with the present reference and there is no use in keeping the reference pending further.

3. In the circumstance, this Tribunal has no other alternative but to dispose of the present reference by

passing a "No Dispute" Award. As such, a "No Dispute" Award is passed and the reference is disposed of.

C. P. MISHRA, Presiding Officer

Dated, Kolkata

The 29th July, 2008.

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2632.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पै. बी.सी.सी.एल. लि. के प्रधानमंत्री के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नम न्यायलय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 100/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2008 प्राप्त हुआ था।

[सं. एल-20012/205/2000 आई आ (सी-1)]

अनंद लता जावास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 100/2002) of the Central Government Industrial Tribunal Labour Court No. 1 Dhanbad now as shown in the annexure, in Industrial Dispute between the employers in relation to the management of M. S. BCCCL Ltd. and their workman, which was received by the Central Government on 13-08-2008.

[No. L-20012/205/2000-IR (C-1)]
SNEHLATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD****PRESENT****Shri H.M. SINGH, Presiding Officer**

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 100 of 2002

PARTIES: Employers in relation to the management of Nudkhorkee Colliery of M. S. BCCCL and their workman.

APPEARANCESOn behalf of the : Mr. K. Chakravorty,
workman Advocate,On behalf of the : Mr. U.N. Lal, Advocate.
employers

State : Jharkhand

Industry : Coal

Dated : Dhanbad, the 28th July, 2008

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/205/2000-I.R. (C-1), dated, the 11th September, 2002.

SCHEDULE

"Whether the claim of the BCKU from the management of BCCL, Block-II Area, Nudkharli Colliery that the workman Shri Mitan Mishra should have been referred to the Medical Board for determination of his age before superannuating him w.e.f. 1-7-1999 and the demand that the workman may be reinstated into service till attainment of the age of superannuation, is just, fair and legal? If so, to what relief is the workman entitled?"

2. In this case both the parties appeared and filed their respective W.S. documents etc. Subsequently at the stage of hearing Ld. Advocate for the workman by filing a petition has submitted to pass a 'No dispute' Award on the ground that the concerned workman involved in this case is not interested to proceed with the hearing of this case.

Perused the petition and heard both sides.

Since the concerned workman is not interested to proceed with the hearing of this case a 'No dispute' Award is passed in this case presuming non-existence of any industrial dispute between the parties.

H.M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. बी.सी.सी.एल. लि. के प्रबंधकों के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचसट (संदर्भ संख्या 149/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2008 प्राप्त हुआ था।

[सं. एल-20012/87/2001-आई आर (सी-1)]

सनेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 149/2001) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. BCCL Ltd. and their

workman, which was received by the Central Government on 13-08-2008.

[No. L-20012/07/2001 IR, (C-1)]
SNEH LATA JAWAS, Desk Officer
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD.
PRESENT**

Shri H. M. Singh, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 149 of 2001

Parties : Employers in relation to the management of Kustore Kshetra of M/s. B.C.C.L. and their workmen.

Appearances

On behalf of the : Mr. D. K. Verma,
employers Advocate

On behalf of the : Mr. Ram Ratan Ram,
workmen General Secretary,
B.M.U.

State : Jharkhand : Industry : Coal.

Dated : Dhanbad, the 29th July, 2008.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/87/2001-(C-1), dated the 24th May, 2001.

SCHEDULE

KYAMESSRS BHARAT COKING COAL LIMITED KUSTORE KSHETRA KEY PRAVANDHTANTRA DWARA SHRI SURESH PASWAN EVAM 98 AANYA KARMKARON (SUCHI SANLAONA HAIN) KO LOADER KEY RULUPMEYN IYAMITANA KIYA JANA TATHA SEVA SEY HATA DIYA JANA SAHI, VIDHIWAT EVAM NAYAOCHIT HAIN? YADI NAHI TO KARMKAR KIS RAHIAT KEY PATRA HAIN TATHA KIS TARIKH SEY?"

2. As per Written Statement filed on behalf of the concerned workmen it is stated that Shri Surendra Paswan and 98 others workmen are working in the job of truck loaders and on some occasions loaded the railway wagon in Ena Colliery under Kustore Area and they are performing their job on regular basis. They are working since April, 1985 and they were engaged in the colliery by the management. They performed their job in colliery ridings and projects as directed by the Management concerned. The concerned workman also stated that they were allotted

duties of loading coal in trucks and railway rakes/wagons and they have continued to perform their job from April, 1985 to December, 1998 and after that management stopped their job without assigning any reason and written information. It has been stated that the Govt. of India Gazetted a notification in 1988 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting the management to stop the contractor workers and private trucks loaders in the premises of the Company and Collieries ridings. As per notification passed by the Govt. management abolished the private trucks loader and contractor workers in the BCCL.

3. Abiding by the order of the Govt. of India, the Management concerned engaged the said workmen to load coal in wagons. The said workmen demanded to the management for their regularisation as loader in permanent job in the Ena Colliery of Kustore Area of M/s. BCCL. The concerned workmen also approached and marged the Deputy Commissioner of Dhanbad to intervene in this regard. Consequently the Deputy Commissioner investigated into the matter and ordered the LEO (Labour Enforcement Officer) to issue Identity Card to all workmen. The LEO then issued an I.D. Card in 1994 to all workmen working in the Fire Project as Coal Loaders in the trucks of M/s. BCCL. and the above workmen were paid wages prevailing at the time as per rule of M/s. BCCL. They have prayed that they should be regularised in their job with wages since December, 1998.

4. The management has submitted in their Written Statement stating therein that the present reference is not legally maintainable as no employer and employee relationship exists between the concerned persons and the management, the present reference is not arising out of any industrial dispute and as such the Hon'ble Tribunal has no jurisdiction to adjudicate on the issue referred above.

5. It has also been submitted that the sponsoring union viz. Bahujan Mazdoor Union has not been recognised by the management as the workmen of the company are not the members of the union and the union has no sufficient strength to sponsor any industrial dispute. The sponsoring union made out the case that the concerned persons were the contractor workers engaged on loading of coal into trucks and demanded for their regularisation by the principal employer. It has been submitted by the management further that raising of the dispute is obviously false as well appear from the facts that the sponsoring union initially submitted a demand notice before the ALCC, Dhanbad, on behalf of Sri Surendra Paswan and 33 others making out the claim that they were the truck loaders loading coal into private trucks and demanded for their absorption by the principal employer. Subsequently it raised the dispute in respect of 178 workers claiming them to be the private truck loaders. The reference has been made in respect of 99 workers. It has also been

stated that it has become the practice of some of the trade unions to raise the dispute for recruitment of workers into the employment of the public sector undertaking with the help of litigation and in that connection they collected number of job seekers and enrolled them as member of their union and demand for their regularisation asserting that the job seekers are the contractor workers engaged on truck loading jobs. In the present case it has been done so though the concerned persons were never engaged by the contractor in the loading job into truck or wagon. It has also been submitted that the management has deployed pay loaders for loading wagons and trucks and therefore, question of engaging private truck loaders for loading job did not and cannot arise. Thus the entire claim is false and concocted and no merit of any kind exists in advancing the claim for regularisation of contractor workers.

6. The sponsoring union has also failed to produce any appointment letter issued by any contractor or I.D. Card of employment or document of worth indicating that they were even engaged by the management on the job of loading wagon and truck. It has been denied that Surendra Prasad and 98 others have ever worked from April, 1985 to December, 1998. It has also been stated that the union had adopted various pressure tactics in collecting the job seekers in large numbers and get themselves recruited into the employment of the management. There is no substance in the contention of the workmen that the LEO issued identity card to the concerned persons as per direction of the D.C. Dhanbad. The D.C. Dhanbad has no jurisdiction to recruit the workmen into the employment of the management and the LEO has no jurisdiction to issue Identity card to the workmen. The Govt. of India has already prescribed the employment procedure and there are constitutional provisions for selection and recruitment of workers into the employment of the management. It has been prayed that an Award be passed holding that the concerned persons are not entitled to get any relief.

7. In course of argument I.D. Advocate for the management submitted that the workmen have produced I.D. Card regarding 27 workmen which has been issued by the LEO, Bihar Govt., Jharia. He argued that the State Govt. has got no right to issue I.D. Card for the workers who are engaged by BCCL or contractor on behalf of BCCL. The representative of the workman has not produced any order of Deputy Commissioner Dhanbad for preparation of I.D. Card of 27 workmen for doing job of the contractors engaged by M/s. BCCL. It shows that these I.D. Cards which has been issued by the LEO, Jharia, Govt. of Bihar has no jurisdiction to issue such I.D. Card for any worker under the control of M/s. BCCL, which is a public sector undertaking of Govt. of India. It shows that these I.D. Cards have been fabricated with a view to secure employment under the management of M/s. BCCL.

8. The applications of workers which have been moved before the Deputy Commissioner, Dhanbad marked as Annexure-I shows that BCCL management has shifted place of loading to another place and winded up Ena Fire Project Loading. It cannot be compelled to the management where they will start loading and where they will close their business for loading. It has been alleged in Annexure-I by the concerned persons that the management changed their working place of loading from Ena Fire Project to Simlabahal siding and taking works from another worker at Simlabahal siding. It has also been prayed in para of Annexure-I that loading of Ena Fire Project be directed to be started, so that the workmen can get work there. This shows that management has closed their loading place at Ena Fire Project and as a result grievances arose amongst the workmen and they are falsely claiming to have worked under the contractor which has been engaged by M/s. BCCL because the representative of the workman has not filed any document which will show that any contractor engaged by M/s. BCCL has employed the concerned persons and issued I.D. Card or any other appointment letter so that it can be believed in any way.

9. MW-I Raghunath Prasad has stated in his examination-in-chief that since about six months the coal loading work in the said colliery is not being carried out. Coal production for the time being is stopped, and in this respect WW-1 has stated in examination-in-chief that we have filed original Identity cards of 27 persons granted by LEO of Bihar Govt. As discussed above the LEO, Govt. of Bihar has got no jurisdiction to issue I.D. Card for any project of BCCL. In cross-examination WW-1 stated that we have not been granted any identity cards by the management of BCCL, and he cannot say why the LEO had not obtained any signature of any official of the management. Therefore, it appears that these I.D. Cards which has been issued by the LEO, Govt. of Bihar has not been signed by any officer or employee of BCCL which may show that they ever worked under the management of BCCL. WW-1 has also stated in page-2 in his cross-examination it is fact that private truck owners used to his private loaders in the area of BCCL for loading of coal and for that purpose we were issued identity cards. The evidence of the above witness shows that loading work is done by private truck owner and private loaders and they have not worked under the contractor which has been employed by the management of M/s. BCCL. There is no document which has been filed by the workmen which may shows relationship of employer and employee between the workmen and the management.

9. (a) In the schedule to the order of reference the number of workmen has been mentioned as Suresh Paswan and 98 others but I.D. Cards have been filed only in respect of 27 workmen. It also shows that without any cogent evidence reference has been made regarding 99 workers.

In the result, the following Award is rendered :—

"Messrs Bharat Coking Coal Limited Kustore Kshetra key Pravandhantra Dwara Shri Suresh Paswan Evam 98 Aanya Karmkaron Ko Loader KEY Rup Mey Niyamita Na Kiya Jana Talha Seva Sey Hata Diya Jana Sahi. Vidhiwat Evam Nayaachit Hain. Ataa Karmkar Kisi Rahat Key Patra Nahi Hain."

H. M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. सी.सी. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 64/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2008 को प्राप्त हुआ था।

[सं. एल-20012/453/90-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. CC Ltd. and their workmen, which was received by the Central Government on 13-8-2008.

[No. L-20012/453/90-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD**
PRESENT : Shri H.M. SINGH, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 64 of 1999

PARTIES: Employers in relation to the management of Kedla Open Cast Project of M/s. C. C. Ltd. and their Workmen.

APPEARANCES

On behalf of the workman : None

On behalf of the employers : Mr. D. K. Verma
Advocate.

State : Jharkhand : Industry : Coal.

Dated the 5th August, 2008.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012-453/90-IR(C-1) dated the 21st April, 1999.

SCHEDULE

"Whether the action of the management of Kedla Open Cast Project of C.C. Ltd., Hazaribagh in not regularising Sh. Mahendra Singh, Security Guard on the post of Driver is justified? If not, to what relief the concerned workman is entitled to?"

2. In this case I.d. Advocate for the management by filing a petition from the wife of deceased workman submitted to pass a 'No dispute' Award on the ground that the wife of the deceased concerned workman is not willing to contest the case on behalf of her husband who died during the pendency of this reference. In view of such submission made on behalf of the workman made in the petition and as no objection raised on behalf of the management, a 'No dispute' Award is passed in this case presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मै. बी.सी.सी.एल. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 94/1994) को प्रकाशित करती है, जो केंद्रीय सरकार को 13-8-2008 को प्राप्त हुआ था।

[सं. एल-20012/403/93-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/1994) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. BCCL Ltd. and their workman, which was received by the Central Government on 13-8-2008.

[No. L-20012/403/93-IR(C-1)]
SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD**
PRESENT: SHRI H. M. SINGH, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 94 of 1994

PARTIES: Employers in relation to the management of Govindpur Colliery of M/s. BCCL Ltd. and their workmen.

Appearances:

On behalf of the workman . . . None

On behalf of the employers . . . None

State : Jharkhand . . . Industry : Coal.

Dated, Dhanbad, the 21st July, 2008

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/403/93-IR (Coal-I), dated the 8th April, 1994

SCHEDULE

"Whether the action of the General Manager, Govindpur Area No. III of M/s. BCCL, P.O. Sonardih Dist. Dhanbad in dismissing Rohania Chamar, Miner/ Loader w.e.f. 18-3-92 is justified? If not, to what relief is the concerned workman entitled to?"

2. It appears from the record of this case that both the parties abstained themselves from appearing before this Tribunal, inspite of issuance of notices to them repeatedly. Accordingly a 'No dispute' Award is passed in this case presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2636.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मै. सी.सी.एल. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 43/1988) को प्रकाशित करती है, जो केंद्रीय सरकार को 13-8-2008 प्राप्त हुआ था।

[सं. एल-20012/194/87-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/1988) of the Central Government Industrial Tribunal/Labour Court No. 1 Dhanbad now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. CCL Ltd. and their workman, which was received by the Central Government on 13-08-2008.

[No. L-24012/194/87-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD**

Present : Shri H. M. Singh, Presiding Officer,

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 43 of 1988

Parties : Employers in relation to the management of
GIDI-A Colliery of M/s. C.C. Ltd and
their workman.

APPEARANCES

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma,
Advocate.

State : Jharkhand : Industry : Coal.

Dated, Dhanbad, the 22nd July, 2008.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/(194)/87-D. IV, dated, the 8th March, 1988.

SCHEDULE

*Whether the action of the Management of GIDI-A Colliery of Central Coalfields Ltd. in terminating the services of Sri Kashinath Bedia alias Kashinath, is justified? If not, to what relief the workman is entitled to?"

2. In this case both the parties appeared and filed their W.S. etc. Subsequently, the workman side abstained from appearing before this Tribunal. Thereafter repeated notices were issued to the workman side but inspite of issuance of notices they failed to appear. Since the workman side failed to appear in spite of issuance of notices, a 'No dispute' is passed in this reference presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2008

का. आ. 2637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै बी.सी.सी.एल. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 71/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2008 को प्राप्त हुआ था।

[सं. एल-20012/512/98-आई आर (सी 1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 13th August, 2008

S.O. 2637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/1999) of the Central Government Industrial Tribunal/Labour Court No. 1 Dhanbad, now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. BCCL Ltd. and their workman, which was received by the Central Government on 13-08-2008.

[No. L-20012/512/98-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 DHANBAD.**

Present : Shri H. M. Singh, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 71 of 1999

Parties : Employers in relation to the management of
Western Jharia Area of M/s. BCC, Ltd. and
their workman.

APPEARANCESOn behalf of the employers : Mr. D.K. Verma,
Advocate.

On behalf of the workman : None

State : Jharkhand : Industry : Coal.

Dated, Dhanbad, the 21st July, 2008.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/512/98-IR (C-1), dated, the 29th April, 1999.

SCHEDULE

"KYA. BCCL, WEST JHARIA KSHETRA KEY PRAVANDHTANTRA DWARA SHRIMATI PYASI MODIN KEY ASHRIT PUTRA KO MAHILA SWECHHA SEVA NIVRITI YOJNA KEY ANTARGATA KARYA NA DENA UCHIT EVAM NAYA SANGATA HAIN? YADI NAHI TO KARMKAR WA UNKEY ASHRIT KIS RAHAAT KEY PATRA HAIN?"

2. In this case workmanside has failed to appear before this Tribunal in spite of issuance of repeated notices to him. Management, however, made appearance through their authorised representative. Since the concerned workman has failed to appear before this Tribunal in spite of issuance of repeated notices, a 'No dispute' Award is passed in this case presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 19 अगस्त, 2008

क्र. आ. 2638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार मै. आई.बी.पी. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, जयपुर के पंचाट (संदर्भ संख्या 46/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-08-2008 को प्राप्त हुआ था।

[सं. एल-20040/64/95-आई.आर. (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 19th August, 2008

S.O. 2638.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 46/1996) of the Central Government Industrial Tribunal/Labour Court No. 1 Jaipur, now as shown in the annexure, in Industrial dispute between the employers in relation to the management of M/s. IPB Ltd. and their workman, which was received by the Central Government on 19-08-2008.

[No. L-20040/64/95-JR(C-1)]

SNEH LATA JAWAS, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 46/1996

रेफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-20040/64/95-आई.आर. (सी. आई) दिनांक 14-10-96

श्री सुभाषचंद शर्मा पुत्र श्री बुद्ध राम, जाति बाढ़ण निवासो ग्राम नारेड़ा कलां तहसील बहरोड़ जिला अलवर।

... प्रार्थी

बनाप

आई.बी.पी. कम्पनी लि. (भारत सरकार का एक उपक्रम) जरिये कारखाना प्रबन्धक प्लॉट नं. 348, 347, औद्योगिक क्षेत्र, भिवाड़ी राजस्थान।

... अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री गौतम प्रकाश शर्मा, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री अरविन्द पारीक

अप्रार्थी की ओर से : श्रीमती नमिता परिहार

दिनांक अवार्ड : 19-3-2008

अवार्ड

1. केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली को उपरोक्त अधिसूचना द्वारा निम्न विवाद इस न्यायाधिकरण को अधिनियम हेतु निर्दिष्ट किया गया है :

"Whether the claim of Shri Subhash Chand Sharma that he was illegally terminated by the management of M/s. I.B.P. Co. Ltd. Bhiwari w.e.f. 31-7-94 without following provisions of Section 25 F is justified? If so, to what claim is the concerned workman entitled?"

2. प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम पेश किया गया जिसके संक्षिप्त तथ्य इस प्रकार हैं कि प्रार्थी की नियुक्ति नियोजक के अधीन 5-6-1993 को इलैक्ट्रीशियन के रूप में की गई थी। तब से प्रार्थी ने लगातार 30-7-94 तक अप्रार्थी संस्थान में कार्य किया किन्तु दिनांक 30-7-94 को बिना कारण से नोटिस सं. 66 के द्वारा प्रार्थी को सेवा मुक्ति कर दी। उक्त सेवा मुक्ति का इस आधार पर श्रमिक ने अनुचित बताया है कि उसने सेवा मुक्ति के पिछले एक वर्ष में 240 दिन से अधिक कार्य किया है। प्रार्थी को सेवा मुक्ति करते समय कोई एक माह का नोटिस अथवा नोटिस वेंतन एवं छुट्टी का मुआवजा आदि नहीं दिया गया है न ही कोई भरिष्ठा सूची प्रकाशित की गई है। इस प्रकार अप्रार्थी ने धारा 25 एक औद्योगिक विवाद अधिनियम 1947 (जो निर्णय में आगे मात्र अधिनियम कहलायेगा) व औद्योगिक विवाद नियम के नियम 27 व 28 का स्पष्ट उल्लंघन किया है। सेवा मुक्ति के समय प्रार्थी को न तो कोई आरोप पत्र दिया न ही कोई घरेलू जांच कराई गई। प्रार्थी से कमिष्ट श्रमिक कार्य कर रहे थे किन्तु प्रार्थी को सेवा मुक्ति किया गया व प्रार्थी को सेवा मुक्ति के पश्चात् नये श्रमिकों की नियुक्ति की गई किन्तु प्रार्थी को सेवा का अवसर नहीं दिया गया। इस प्रकार अधिनियम की धारा 25-जी व 25-एच का भी स्पष्ट उल्लंघन किया है। अतः प्रार्थी की प्रार्थना है कि सेवा मुक्ति आदेश दिनांक 30-7-94 को अनुचित व अवैध घोषित कर अपास्त किया जावे एवं प्रार्थी को पूर्ण वेंतन सहित मय सेवा की निरन्तरता के सेवा में बहाल करने का अवार्ड पारित किया जावे।

3. अप्रार्थी की ओर से क्लेम का जवाब पेश किया गया जिसके अनुसार प्रारंभिक अपाति की गई कि प्रार्थी ने सेवा मुक्ति

आदेश को विरुद्ध माननीय उच्च न्यायालय में रिट याचिका प्रस्तुत की थी जो खारिज हो गई अतः उसी विवाद को नये सिरे से इस न्यायाधिकरण के समक्ष नहीं बढ़ाया जा सकता, अतः इसी आधार पर क्लेम खारिज होने योग्य बताया।

4. गुणावगुण पर अप्रार्थी का जवाब में कथन है कि श्रमिक की नियुक्ति 3-8-93 को पूर्णतया अस्थाई तौर पर व तीन माह के लिए श्रमिक के रूप में की गई थी। इसके बाद दिनांक 23-9-93 के आदेश द्वारा प्रार्थी की नियुक्ति अवधि तीन महीने के लिए बढ़ाई गई और आदेश दिनांक 26-4-94 द्वारा प्रार्थी श्रमिक को नये सिरे से 1450 रुपये प्रतिमाह की दर से 4 माह के लिए नियुक्त किया गया। इसी आदेश को दिनांक 26-4-94 द्वारा 31-7-94 तक बढ़ाया गया, इस प्रकार नियुक्ति पत्रों से स्पष्ट है कि श्रमिक को किस दिनांक तक सेवा में रहना है, अंकित है और नियुक्ति पत्र में ही प्रार्थी की सेवा समाप्ति का दिन अंकित किया हुआ है। जवाब में आगे बताया कि प्रार्थी को दिनांक 26-7-94 के पत्र द्वारा सूचित कर दिया गया था कि उसकी अस्थाई नियुक्ति दिनांक 30-7-94 को समाप्त हो रही है और वह अपने ड्यूटी व वेतन आदि 30-7-94 को 5 बजे से पहले उपस्थित होकर प्राप्त कर ले किन्तु उसने अपने ड्यूटी प्राप्त नहीं किये अतः प्रार्थी को एक पत्र 1-8-94 को भेजा गया जिसके साथ 5584 रुपये का डी.डी. संलग्न कर भेजा गया जो उसके सम्पूर्ण बकाया का भुगतान था। इस प्रकार प्रार्थी की सेवा समाप्ति को नियमानुसार बताते हुए अप्रार्थी ने क्लेम खारिज करने की प्रार्थना की है।

5. साक्ष्य में प्रार्थी स्वयं परीक्षित हुआ है तथा अप्रार्थी की ओर से श्री डी.जी. रेखामुख परीक्षित हुए। दोनों पक्षों को बहस सुनी, पत्रावली का अवलोकन किया।

6. प्रार्थी प्रतिनिधि की बहस है कि प्रार्थी की नियुक्ति दिनांक 5-6-93 को अप्रार्थी नियोजक के अधीन इलेक्ट्रिशियन श्रमिक के रूप में की गई थी एवं प्रार्थी ने दिनांक 30-7-94 तक अप्रार्थी संस्थान में लगातार कार्य किया। दिनांक 30-7-94 को बिना किसी कारण नोटिस सं. 66 से प्रार्थी की सेवा मुक्ति कर दी तथा कोई कारण नहीं बताया। प्रार्थी की सेवा अवधि 240 दिन से अधिक की थी। प्रार्थी को सेवा मुक्त करते समय कोई एक माह का नोटिस, नोटिस के एवज में एक माह का वेतन एवं छंटनी का मुआवजा आदि नहीं दिया गया न ही कोई परिष्कृत सूची प्रकाशित की गई। इस प्रकार अप्रार्थी ने धारा 25-एफ अधिनियम का उल्लंघन किया है। प्रार्थी को कोई आरोप पत्र नहीं दिया गया न ही कोई जांच करवाई गई जिससे भी सेवा मुक्ति अवधि व शून्य होना बताया। उनकी आगे बहस है कि जिस समय प्रार्थी को सेवा मुक्त किया उससे कनिष्ठ श्रमिक कार्यरत थे एवं उनके कार्यरत रहते हुए प्रार्थी को सेवा मुक्त करना धारा 25-जी अधिनियम का स्पष्ट उल्लंघन है। यह भी बहस है कि प्रार्थी की सेवा मुक्ति के पश्चात् नये श्रमिकों को नियुक्ति दी गई लेकिन उससे पहले प्रार्थी को सेवा का अवसर नहीं दिया और धारा 25-एफ का भी उल्लंघन किया है। प्रार्थी प्रतिनिधि की बहस है कि प्रार्थी ने अपने कथन स्वयं की साक्ष्य से सिद्ध किये हैं अतः पारित सेवा मुक्ति आदेश को अपास्त करते हुए प्रार्थी को पुनः सेवा में लिया जाये व बकाया वेतन आदि लाभ दिलाये जायें।

7. अप्रार्थी प्रतिनिधि की बहस है कि प्रदर्श डब्ल्यू-1 नियुक्ति आदेश, जिस पर प्रार्थी स्वयं विश्वास करता है, के अनुसार प्रार्थी की नियुक्ति मात्र तीन माह के लिए व 1250 रुपये प्रतिमाह की शर्तों पर की थी। इसके बाद में भी प्रार्थी की सेवा अवधि प्रदर्श डब्ल्यू-1 में वर्णित शर्तों के अनुसार निश्चित अवधि व निश्चित वेतन पर बढ़ाई गई। इस तरह से प्रार्थी की नियुक्ति करार के अधीन एवं तदर्थ रूप में थी जो एक निश्चित अवधि व निश्चित राशि पर थी, अर्थात् प्रार्थी की नियुक्ति स्थाई पद पर व स्थाई रूप से कतई नहीं थी। इन हालात में अप्रार्थी नियोजक ने प्रार्थी की जो सेवा समाप्त की, उक्त सेवा समाप्ति करार में वर्णित शर्तों के अनुसार की गई है। अतः धारा 25-एफ अधिनियम या अन्य प्रावधानों का कोई उल्लंघन होना नहीं माना जा सकता। उनकी आगे बहस है कि प्रार्थी व अन्य नौ व्यक्तियों द्वारा एक रिट याचिका माननीय राजस्थान उच्च न्यायालय में जो एस. बी. सिविल रिट पट्रिशन नं. 4182/94 में दर्ज हुई, पेश की। उक्त रिट याचिका को सिवाय श्री कमलजीत के बकाया प्रार्थीगण ने वापस ले लिया एवं माननीय उच्च न्यायालय ने उक्त रिट याचिका को गुणावगुण पर अस्वीकार कर दिया अतः प्रार्थी का मामला भी कमलजीत के मामले से भिन्न नहीं है। उन्होंने दृष्टान्त (1992) 4 एस.सी.सी. 33 डायरेक्टर, इन्स्टीट्यूट ऑफ मैनेजमेंट डेवलपमेंट यू.पी. विरुद्ध श्रीमती पुष्पा श्रीवास्तव पेश किया और बताया कि जहाँ नियुक्ति निश्चित अवधि व नितान्त रूप से करार के आधार पर व तदर्थ रूप में की गई हो तो विधि अनुसार प्रार्थी को सेवा में निरन्तरता का अधिकार नहीं रह जाता। प्रकरण में भी प्रार्थी ने सेवा में निरन्तरता मांगी है। इस आधार पर भी प्रार्थी का क्लेम अस्वीकार होने योग्य बताया।

8. मैंने बहस पर गौर किया। प्रदर्श डब्ल्यू-1 नियुक्ति आदेश दिनांक 5-6-93 में प्रार्थी की नियुक्ति तीन माह के लिए तथा 1250 रुपये प्रति माह वेतन पर की गई थी। प्रदर्श 4, 5 व 6 से प्रार्थी को पुनः नियुक्ति की गई जो प्रदर्श डब्ल्यू-1 की शर्तों के आधार पर की गई है। प्रदर्श डब्ल्यू-7 जो नोटिस सं. 66 है जिसके द्वारा प्रार्थी व अन्य की सेवा समाप्त की, के संबंध में है, इस नोटिस को देखने से प्रार्थी को तीन माह अग्रिम वेतन का डी.डी. भेजा गया है। प्रदर्श एम-8 भी इसी संबंध में जारी हुआ है।

9. प्रकरण में यह तथ्य, जैसा कि अप्रार्थी के गवाह श्री देशमुख की जिरह में आया, प्रार्थी ने अप्रार्थी नियोजक के बहाँ 240 दिन से अधिक काम किया था स्वीकृत है, लेकिन प्रार्थी की नियुक्ति अप्रार्थी नियोजक के इस संबंध में बने नियम, यदि कोई हो तो, के अनुसार की गई हो नहीं पाया जाता है, न ही इस नियुक्ति के संबंध में कोई सार्वजनिक सूचना जारी कर आम लोगों से आवेदन प्राप्त कर चयन किया जाकर की गई हो, पाया गया है। स्पष्ट रूप से प्रार्थी की नियुक्ति करार के रूप में निश्चित अवधि व निश्चित राशि जो प्रति माह तय थी, के आधार पर की गई है। दृष्टान्त पुष्पा श्रीवास्तव के मामले में भी श्रमिक की सेवा एक साल से अधिक हो गई थी लेकिन चूँकि श्रमिक की नियुक्ति नितान्त रूप से करार के आधार पर व तदर्थ रूप में तथा निश्चित अवधि व निश्चित वेतन की शर्तों के साथ की गई थी, अतः उसकी सेवा मुक्ति को अवैध नहीं माना। इस्तागत प्रकरण के तथ्य भी दृष्टान्त के तथ्यों से मेल खाते हैं।

इसके अतिरिक्त माननीय राजस्थान उच्च न्यायालय ने रिट सं. 4182/94 निर्णय दिनांक 22-8-94 के द्वारा कमलजीत के मामले को गुणावगुण पर अस्वीकार किया एवं कमलजीत का मामला भी प्रार्थी के मामले से भिन्न नहीं है।

10. इस सारे विवेचन से मेरा निष्कर्ष है कि प्रार्थी के मामले में धारा 25-एफ अधिनियम की पालना किया जाना आवश्यक नहीं था एवं धारा 25-जी व एच अधिनियम के प्रावधान भी प्रकरण पर लागू होना नहीं पाया गया है। अतः प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है व भेजे गये रैफरेंस का उत्तर निम्न प्रकार दिया जात है :

“प्रार्थी श्री सुभाष चंद शर्मा, का यह दावा कि उसकी सेवाएं मैसर्स आई.बी.पी. कम्पनी लि., भिवाड़ी के प्रबन्धन द्वारा 31-7-94 से अवैध रूप से धारा 25-एफ अधिनियम के प्रावधानों की पालना किये बिना समाप्त की गई है, उचित नहीं है। प्रार्थी किसी प्रकार के अनुतोष (राबे) का अधिकारी नहीं है।”

8. अर्वाइ आज दिनांक 19 मार्च, 2008 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 20 अगस्त, 2008

क्र.आ. 2639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मे. बी.सी.सी.एल. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 213/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-08-2008 को प्राप्त हुआ था।

[सं. एल. 20012/12/93 आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 20th August, 2008

S.O. 2639. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 213/1994) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad, now as shown in the Annexure, in Industrial dispute between the employers in relation to the management of M/s. BCC Ltd. and their workman, which was received by the Central Government on 20-08-2008.

[No. L-20012-12/93-IR(C-1)]

SNEHLATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD

Present : Shri H. M. Singh, Presiding Officer.

**In the matter of an Industrial Dispute under Section
10(1(d) of the I.D. Act, 1947).**

Reference No. 213 of 1994

Parties : Employers in relation to the management of
Bhagaband Colliery of M/s. BCC Ltd and
their workman.

APPEARANCES

On behalf of the workman : None

On behalf of the employers : None

State : Jharkhand : Industry : Coal.

Dated, Dhanbad, the August, 2008.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/512/93-IR(C-1), dated the 26th August, 1994.

SCHEDULE

“Whether the management of Bhagaband Colliery of M/s. Bharat Coking Coal Ltd., is justified in not regularising S/Shri Triloko Koiri, Rameshwar Ram, Dalsingar Chamar, Salik Harizan, Pati Ram Bhar, Santosh Mahato, Sudama Yadav, Moti Ram Sah, Sri Ram Gope, Mansha Gope, Jitkoo Chamar and Gopal Sah on time rated job? If not, to what relief the workmen are entitled to?”

2. In this case neither the concerned workmen nor their representative appeared before this Tribunal. None also appeared on behalf of the management. It appears that Regd. notice and show cause notices were issued to both the side. But inspite of the issuance of notices they failed to turn up before this Tribunal. As both the parties failed to turn up before this Tribunal inspite of issuance of notices to them a ‘No dispute’ Award is passed in this case presuming non-existence of any industrial dispute between the parties.

H. M. SINGH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2008

AWARD

का. आ. 2640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पै. एअर इंडिया लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 11, मुम्बई के पंचाट (संदर्भ सं. 2/55/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-08-2008 को प्राप्त हुआ था।

[सं. एल-11012/64/2007-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 21st August, 2008

S.O. 2640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/55/2007) of the Central Government Industrial Tribunal/Labour Court, No. 2, Mumbai now as shown in the Annexure, in the Industrial dispute between the employers in relations to the management of M/s. Air India Ltd., and their workman, which was received by the Central Government on 21-08-2008.

[No. L-11012/64/2007-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : A.A. Lad, Presiding Officer****Reference No. CGIT-2/55 of 2007****Employers in Relation to the Management of AIR India Limited**

(Now : National Aviation Co. India Ltd.)

The Chairman & Managing Director
National Aviation Co. India Ltd.
Air India Building
Nariman Point
Mumbai-400021.

AND**Their Workmen**

Shri G.T. Vhatkar
Room No. 5, Manuseth Chawl
Dharavi Koliwada
Holi Maidan, Dharavi
Mumbai-400017.

APPEARANCES

For the employer : Mr. L.L. D'Souza, Representative

For the workmen : In person

Mumbai, dated 7th July, 2008.

The Government of India, Ministry of Labour by its Order No. L-11012/64/2007-IR(CM-I)) dated 25-10-2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have been referred the following dispute to this tribunal for adjudication :

"Whether the action of the management of Air India Ltd., Mumbai in removing Sh. G.T. Vhatkar, Security Assistant-III, from the service w.e.f. 3-8-2001 is justified and legal? If not, to what relief is the concerned workman entitled?"

2. In response to the notice sent to second party, after receipt of reference, by Ex-3 and then by Ex-10 he submits that, he has not challenged the removal of his service or termination while approaching to Regional Labour Commissioner (C), Mumbai with application dated 14-3-2007. According to him, by said application he raised dispute about payment of arrears and not raised dispute regarding termination dated 3-8-2001 which is referred in the schedule of the reference. According to him, he has no problem with termination as he did not challenge it by approaching Regional Labour Commissioner (C), Mumbai. So he prayed to dispose of the reference accordingly.

3. In view of Ex-3 & Ex-10, reference is disposed of Hence the order :

Order

In view Ex-3 & Ex-10, reference is disposed of.

Dated 7-7-2008.

A.A. LAD, Presiding Officer

Ex-3

Shri. G.T. Vhatkar
Room No.5, Manuseth Chawl,
Dharavi Holi Maidan,
Dharavi, Mumbai 400 017

Date : 12-11-2007

To,

The Presiding Officer,
Cent. Govt. Industrial Tribunal-
Cum-Labour Court, No. 2,
2nd Floor, Shram Raksha Bhavan,
Shivshrushti Road,
Opp. Priyadarshini,
Off. Eastern Express Highway,
Sion, Mumbai 400 022

Sub. : Order dtd. 25-10-2007 bearing No. L- 11012/64/2007-IR (CM-I) of Government Of India/ Bharat Sarkar Ministry of Labour/ Shram Mantralaya, New Delhi.

Respected Sir,

I am in receipt of the above referred order of the Central Govt. referring the dispute for adjudication to

C.G.J.T.-Cum-Labour Court, Mumbai No. 2, under clause (2) of Sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 (14 of 1947).

First of all I want to point out to you that this is fraud with the Central Govt. played by Mr. Hemant Kumar of Air India Ltd. with the hand in gloves with the Asstt. Labour Commissioner, Central Mumbai Mr. Ganpati Bhatt.

In fact I had made an application dt. 14-03-2007 to the Regional Labour Commissioner (Central) Mumbai for taking action against the Management of Air India Ltd. for following unfair labour practice. Ex. "A" is the copy of the said Letter dtd. 14-3-2007. In order to suppress my said application dtd. 14-03-2007 under the Fifth Schedule Management of Air India Ltd. itself raised the dispute and the said Dispute was referred by Assistant Labour Commissioner (Central), Mumbai to the Central Government. For whose benefit is the dispute raised? Management is not spending money from their pocket. They are unnecessarily utilizing the Public Money. They are getting their regular salaries and benefits. I am without any earning for the last six to seven years because of which myself and my family suffered miserably. Management of Air India Ltd. is in the habit of filing frivolous proceedings and wasting the public money. They are also getting extra money for attending the Court matters.

Management of Air India Ltd. has spent huge public money for approval application u/s-32 (2)(b) of the I.D. Act which came out to be a non est/ infructuous. Management of Air India Ltd. has never spent money from their pockets but utilized public money. Whereas I had to spent money for paper work, appointing Advocate and for attending the Court Matters at the point of time when I had no earnings. Approval application was never warranted because my so called removal from service was on the basis of absenteeism which never had any nexus with Reference NTB-1 of 1990 because Reference NTB-1 of 1990 is regarding the wage structures of certain categories of workman with which I am not related at all. On 6-9-2004 NIT Mumbai declared that Air India Ltd. ought not to have been party in Ref. No. NTB-1 of 1990. This fact was suppressed by Air India Ltd. and also by Mrs. Avsare Secretary of Court No.1 NIT Mumbai and after two Years Air India Ltd. made application for declaring the approval Application to be infructuous and non est.

Even after filing of this application Air India Ltd. made false statement before the Court that the issue whether Air India Ltd. is a party to the Ref. No. NTB-1 of 1990 is pending before the Hon. High Court because they wanted to just go on prolonging the matters in Approval Application. At whose cost? This was all by utilizing and wasting the Public Money.

I have never been served with the punishment order as per the certified standing order which I could challenge before Appellate Authority of the Company

I had made application before the Regional Labour Commission for taking against the Management of Air India Ltd. for following Unfair Labour Practice. I never raised any dispute before the Labour Commissioner. Asstt. Labour Commissioner Mr. Ganpati Bhatt has favoured Company by making dispute Reference of the Central Government clearly shows that the points therein are to be proved by the Company. Company wants to unnecessarily drag on the matter because they can utilize public money for filling up their pockets. Besides salary they are getting extra money for attending the Court.

Company had filled approval application u/s. 33 (2) (b) of the Industrial Dispute Act 1947, without their being any Industrial Dispute or any foundation. If the Company wants me now to contest the Reference who is going to pay my losses of all these 7 years?

I am deemed to be fit in service because Approval Application filled by the Company are infructuous/non est. I have not been served with any dismissal order or termination order.

In the circumstances it is prayed that the above referred Reference be sent back to the Central Govt. for saving Public Money as Air India Ltd. is a Govt. of India's undertaking. If my services are not restored by Air India Ltd. or National Aviation Company of India Ltd. as it is now called, within 7 days, I will be compelled to proceed against Union of India the Central Government, Regional Labour Commissioner (Central), Mumbai, National Industrial Tribunal, Mumbai Court No.1, C.G.J.T, Mumbai Court No.2, and Air India Ltd. before the Hon'ble High Court, Mumbai in voking Article 326 of the Constitution of India, for restoring my services

Yours truly

(SHRIG T. VHAIKAR)

Exh No. 11

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2 AT MUMBAI

Reference NO. C.G.J.T.-2/55 of 2007

Employers in Relation to the Management of Air India
Limited

(Now: National Aviation Co. India Ltd.)

AND

Their Workmen

MAY IT PLEASE BE YOUR HONOUR

I, G. T. Vhaikar (Workman) most respectfully states and submit as under as :

I am in receipt of the above referred order of the Central Government referring dispute for adjudication to

CGIT Labour Court No. 2, Mumbai, under clause (2) of Section (1) and sub-section (2A) of Section 10 of the I.D Act 1947 (14 of 1947).

First of all I want to point out to you that this is fraud with the Central Government played by Mr. Hemant Kumar of Air India Ltd. With the hand in gloves with the Asst. Labour Commissioner (Central) Mumbai Mr. Ganpati Bhatt.

I had made application dtd. 14-3-2007 to the Regional Labour Commissioner (Central) regarding payment of arrears. In the said application I never raised the issue regarding my removal from services or termination. Ex. "A" is the copy of application dt. 14-3-2007.

By my letter dtd. 28-06-2007 to the Asst. Labour Commissioner (Central) Mumbai, I informed that I had withdrawn complaint against Air India Ltd. Ext. "B" is the copy of the letter dtd. 28-6-2007 to Asst. Labour Commissioner (Central) Mumbai with drawing my complaint against Air India Ltd.

Management of Air India Ltd. has spent huge public money for approval application U/s 32(2)(b) of the I.D Act, which came out to be a nonest/infructuous.

I had made application before the Regional labour commissioner for non payment of wages and other allowance as per award dated 31-8-2008 passed by CGIT-2 Mumbai & Arrears I never raised any dispute before the Labour Commissioner regarding my removal from services or termination. Asst. Labour Commissioner Mr. Ganpati Bhatt has favoured company by making dispute reference of the Central Government clearly shows that the points therein are to be proved by the company.

Company had filed approval application U/s 33(2) (b) of the Industrial Dispute Act, 1947 without their being any industrial dispute or any foundation. If the company wants me now to contest the reference who is going to pay my losses of all these 7 years?

I am deemed fit in services because approval application filed by the Company are infructuous / nonest.

I never raise dispute regarding my removal from service or termination. My application dtd. 14-3-2007 is only regarding the Arrears (Payment of Arrears).

By my letter dated 21-5-2008 and 3 June, 2008 to the Secretary, Ministry of Labour and Employment, Government of India, Shram Mantralay, New Delhi. I informed to withdrawn reference order. (Order dated 25-10-2007 bearing No. L-11012/64/2007 IR-(CM-1) Ext. "C" is the copy of the letter dated 21-5-2008 and 3-6-2008.

In the circumstance it is prayed that the above referred Reference be sent back to the Central Government.

Kindly please allow to withdraw this Reference.

Date: 7-7-2008

Place: Mumbai

Yours truly,

G.T. VHATKAR

(Workman)

नई दिल्ली, 21 अगस्त, 2008

का. आ. 2641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. कोची रिफाइनरीज लि. के प्रबंधन के संबंध निवृत्तकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ सं. 233/2006 को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-08-2008 प्राप्त हुआ था।

[सं. एल-30012/68/98-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 21st August, 2008

S.O. 2641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2006) of the Central, Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. Kochi Refineries Ltd., and their workmen, which was received by the Central Government on 21-08-2008.

[No. L-30012/68/98-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.P.L.Norbert, B.A., L.L.B.,
Presiding Officer

(Wednesday the 14th day of May, 2008/
24th Vaisakha 1930)

I.D. 233/2006

(I.D. 31/1999 of Labour Court, Ernakulam)

Union : The General Secretary,
Kochi Refineries Employees
Association, Ambalamughal,
Ernakulam District.

By Adv. Sri. C.S. Ajith Prakash.

Management : The General Manager (HRM),
Kochi Refineries Ltd.,
Ambalamughal, Ernakulam District.

By Adv. M/s.Menon and Pai.

This case coming up for hearing on 13-5-2008, this Tribunal-cum-Labour Court on 14-5-2008 passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :—

“Whether the denial of promotion of Sh. M.P. Raju from General Workman Grade-III to Craftsman Trainee Gr.-IV by CRL Management is justified? If not, what relief the workman is entitled to?”

2. Facts of the case in brief are as follows:—

Shri. M.P. Raju was in service of Kochi Refineries Limited, Ambalamughal as general workman Grade-III. His grievance is that he was denied promotion to Gr.-IV Craftsman Trainee by the management in 1996. According to the union, which has espoused the cause of the workman, in the selection process for promotion, the workman was sidelined and several others junior to him were promoted. The workman had satisfied all the requirements for promotion. The promotion committee had not properly evaluated the performance, conduct, seniority and regular attendance of the workman. No written test was conducted as required in the promotion policy. He is entitled for promotion w.e.f. 1996.

3. According to the management any alteration in the seniority list will affect the already promoted employees. Without hearing them no order can be passed, which would go against them. They are necessary parties for adjudicating such an issue. There is promotion policy which prescribes that for selection of candidates for promotion, several factors like seniority, qualification, experience, knowledge or the new job, health, attendance etc. are to be taken into account. The workman was not found suitable for promotion by the promotion committee. The promotion policy dated 31-1-1973 was formulated by the management through conciliation and settlement. On 5-8-1996 a notice was published in the company inviting applications from workmen to fill up 20 posts of ‘Craftsman Trainee’ in the Maintenance Department. Permanent workmen in Grade-II and III were eligible to apply for the post. Out of the candidates applied 95 were found eligible and they were called for an interview. Committee found 14 candidates suitable for promotion and their names were recommended. However the workman was not selected. But later he qualified for selection and was promoted as Craftsman Trainee w.e.f. 1-9-1999. Hence the dispute is infructuous.

4. In the light of the above contentions the only point that arises for consideration is:—

“Whether the denial of promotion to the workman in 1996 is legal and justified?”

The evidence consists of documents Exts.M 1 and M2 alone.

5. The Point: In 1996 when the management invited applications for selection to the post of Gr.-IV Craftsman

Trainee the workman was Gr.-III general workman. He had applied for selection. Ext.M1 is notice of job vacancy of 20 posts of Craftsman Trainee in the Maintenance Department. The qualification and procedure for selection are mentioned in the notice. Gr.-II and Gr.-III general workmen were eligible to apply for selection to the post. The selection had to be based on test and/or interview. Ext.M2 is the interview result. As per the promotion policy made mention in written statement 7 factors have to be looked into by a promotion committee. Those factors are noted in Ext. M2 interview result. They are seniority, qualification and experience, knowledge of the new job, potential to move up, review of latest appraisal form, communication, and health/attendance. Sri.M.P. Raju scored 44 points in the interview and he was 25th in rank. Though there were 20 vacancies the promotion committee found only 14 candidates suitable for selection. Assuming that 20 candidates were selected to fill up all the 20 vacancies even then the workman was ranked 25th and hence he would not have got a chance for promotion in 1996. The union has not been able to point out what, if any, was the malpractice done by the promotion committee to disqualify the workman for selection. The union does not say on what count marks were reduced purposely. No motive is also alleged for victimising the workman. There is nothing to show that the workman was discriminated or victimized by the promotion committee. The selection is properly made and I find no illegality in the process of selection. The management has mentioned in para 16 of the written statement that the workman was promoted subsequently as Craftsman Trainee in the next selection w.e.f. 1-9-1999 in the Maintenance Department (order produced on 13-05-2008). Again he was promoted as Mechanic Craftsman w.e.f. 1-6-2007 (Order produced on 13-5-2008). These orders were produced after the arguments were completed. However the union admits the promotion given to the workman in 1999 and 2007. But as pointed out earlier he was not eligible for promotion in 1996.

In the result, an award is passed finding that the action of the management in denying promotion to the workman Sri. M.P. Raju to Grade-IV Craftsman Trainee in 1996, is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 14th day of May, 2008.

P. L. NORBERT, Presiding Officer

Appendix**Exhibits for the Management**

- | | |
|----|---------------------------------------|
| M1 | Notice of job vacancy dated 5-8-1996. |
| M2 | Interview result. |

नई दिल्ली, 21 अगस्त, 2008

का. आ. 2642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार में कोची रिफाइनरीज लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाद (संदर्भ सं. 232/2006) का प्रकाशित करती है, जो केन्द्रीय सरकार को 21-08-2008 को प्राप्त हुआ था।

[सं. एल-30012/40/98-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 21st August, 2008

S.O. 2642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 232/2006) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. Kochi Refineries Ltd., and their workman, which was received by the Central Government on 21-08-2008.

[No. L-30012/40/98-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri P.L. Norbert, B.A., LL.B.,
Presiding Officer

(Wednesday the 14th day of May 2008/
24th Vaisakha 1930)

I.D. 232/2006

(I.D. 30/1999 of Labour Court, Ernakulam)

- | | |
|------------|--|
| Union | : The General Secretary,
Kochi Refineries Employees
Association, Ambalamughal,
Ernakulam District.

By Adv. Sri C.S. Ajith Prakash. |
| Management | : The General Manager (HRM),
Kochi Refineries Ltd.,
Ambalamughal, Ernakulam District.

By Adv. M/s. Menon & Pai. |

This case coming up for hearing on 13-5-2008, this Tribunal-cum-Labour Court on 14-5-2008 passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :

"Whether the action of the Management of Cochin Refinery in denying promotion to Sh. K.V. Paulose Workman Gr. III to Gr. IV Craftsman Trainee, while his juniors have been promoted is fair, justified and legal? If not, what relief the workman is entitled and from what date?"

2. Facts of the case in brief are as follows :—
Shri K.V. Paulose was workman Grade-III in Kochi Refineries Limited, Ambalamughal from 1987 onwards. Dispute regarding his promotion is raised by his union by this reference. His grievance is that he was denied promotion from Gr. III to Gr. IV Craftsman Trainee without any reason while his juniors were promoted. He was fully qualified for promotion in 1994. The promotion committee did not properly evaluate the performance, conduct of the workman, his seniority, punctuality etc. Though the promotion policy prescribes a test for selection, no such test was conducted by the management. Selection for promotion was made on the basis of an interview. This is improper as the management can give promotion to persons of their choice.

3. According to the management the service conditions of workman in the company are decided as per the standing orders and settlements entered into between management and unions. The management in consultation with unions introduced promotion policy on 31-7-1973. As per the promotion policy a promotion committee is bound to assess the suitability of candidates. The factors such as seniority, qualification, experience required for the job, knowledge of the new job, potential to move up, review of latest appraisal, communication and health/attendance etc. are taken into consideration by the promotion committee. The workman in the present case was not found suitable for promotion as there were more suitable and meritorious candidates. Out of the 57 applicants only 10 were found suitable for promotion. The workman was not a person among the successful 10 candidates. The promotion policy does not prescribe a written test for selection. Interview is sufficient. However the workman did not score marks as much as the 10 successful candidates who secured high marks. Hence the workman could not be promoted in 1994. However he was promoted to Gr. IV on 1-2-1998. Therefore the dispute has become infructuous.

4. In the light of the above contentions the only point that arises for consideration is:

Whether the denial of promotion in 1994 is illegal and in violation of promotion policy.

The evidence consists of documents Exts.M I to M3 alone.

5. The Point :—The grievance of Sri K.V. Paulose, General Workman Grade-III is that he was given promotion

to Grade-IV Craftsman Trainee in 1994 selection. He had joined service as General Workman Grade-II in 1987 and was promoted as Grade-III later. There was a selection by the promotion committee in 1994. The workman Sri Paulose was an applicant for promotion. Ext. M 1 is a notice of job vacancy inviting applications from employees in the company for filling up 10 posts of Craftsman Trainees in the Maintenance Department. The notice specifies the qualification for promotion. It is mentioned that the selection will be based on test and/or interview. Ext. M3 is promotion policy dated 31-7-1973. According to the procedure for filling up vacancies, clause 4 says that the promotion committee will perform further screening and those candidates considered suitable shall be tested/interviewed. The candidates will be assessed with reference to 7 factors i.e. seniority, qualification and experience, knowledge of the new job, potential to move up, review of latest appraisal form, communication, and health/attendance and marks are provided on every factor. Ext. M2 is the result of interview for selection to the post of Craftsman Trainee. The marks scored by each candidate in respect of the 7 factors are noted in Ext. M2. The workman Sri K.V. Paulose, Badge No. 1659 scored total points of 49.5 in the interview. Out of the candidates appeared for interview 49 persons secured more than 50 points. Out of them 10 persons who scored high marks were selected. The workman was not one of them. Hence he was not considered as a successful candidate for promotion in 1994.

6. The union was not able to point out which of the factors was not properly considered by the promotion committee or how the marks were reduced or the workman was discriminated. The union does not allege any prejudice on the part of promotion committee or motive to victimise the workman. The contention that a written test should have been conducted by the promotion committee for selection does not carry conviction. The promotion policy Ext.M3 Clause 4 (page-2) only says that a test/interview will be conducted. It means that the promotion committee was free to conduct either test or interview. Therefore a written test was not mandatory. The committee was given freedom to evaluate the suitability of a candidate by awarding marks on 7 factors already made mention. Thus the chance of arbitrariness is minimised. Even otherwise the union has not pointed out what is the arbitrariness or discrimination shown to the workman by the promotion committee. Hence the denial of promotion in 1994 is in no way illegal or arbitrary. He was subsequently promoted. The management has produced the promotion orders given to Sri Paulose in 1998 as Grade IV Craftsman Trainee and 2003 as Grade V Mechanic Craftsman. The orders of promotion were produced after completion of argument.

However, the union does not dispute the promotion given subsequently. I find nothing wrong in the gesture of management in not selecting the workman for promotion in 1994.

In the result, an award is passed finding that the action of the management in denying promotion to the workman Sri K.V. Paulose to Gr. IV Craftsman Trainee in 1994 is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 14th day of May, 2008.

P. J. NORBERT, Presiding Officer

Appendix

Exhibits for the Management

- M1 — Notice of Job vacancy dated 28-4-1994.
- M2 — Result of Interview of different workers for the purpose of selection to the post of Craftsman Trainee.
- M3 — Promotion Policy dated 31-7-1973.

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार मै. एस. बी. सी. सी. लि. के प्रबंधन के संवद्ध श्रमिकों और उनके कार्यकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.), धनबाद के पंचाट (संदर्भ संख्या 29/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-2-2008 को प्राप्त हुआ था।

[सं. एल-20012/333-90-आई आर(सी-1)]

मोह लता जवास, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/1991) of the Central Government Industrial Tribunal/Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of S. B. C. C. Ltd. and their workman, received by the Central Government on 22-2-2008.

[No L-20012/333-90-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. I,

DHANBAD

In the matter of a reference Under Sec. 10(1)(d)(2A) of
 Industrial Disputes Act, 1947

Reference No. 29 of 1991

PARTIES: Employers in relation to the management of
 Basudeopur Colliery of M/s. B. C. C. Ltd.

And

Their Workmen.

PRESENT: Shri H. M. Singh,
 Presiding Officer.

APPEARANCES ;

For the Employers : Shri H. Nath, Advocate.

For the Workmen : Shri R. N. Ganguly, Advocate.

State : Jharkhand. Industry : Coal.

Dated, the 11th August, 2008

AWARD.

By Order No. L-20012/333/90-IR(Coal-I) dated 11-4-91 the Government of India in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (i) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether Sri Fuleshwar Yadav, Sri Triveni Yadav, Dinanath Prasad, Ram Lagan Paswan and Ramdeo Prasad can be deemed as employee of the management of Basudeopur Colliery of M/s. B. C. C. L. and whether the demand that these persons being regularised in the service of the said management is justified? If so, to what relief are these persons entitled to?"

2. As per written statement of the workmen it has been stated that they have been employed as stone cutters at Basudeopur colliery during the period from 1983 to 1986 and they were paid by the management through the contractor, Ramyash Upadhyaya and when they lodged complaint regarding less payment by the Contractor they were stopped from work and the matter was reported to the A.L.C. (C) and L.E.O. It has been stated that they have worked in the mine under the supervision of the Mining Sirdar and Overman who were appointed by the management. They worked with the implements supplied by the management and they worked for the benefit of the management. It has also been mentioned that the management replied to the demand of the union to the A.L.C. (C) for regularisation and for payment as per

J.B.C.C.I./N.C.W.A. management submitted that the workmen never worked in the prohibited category. It has also been contended on behalf of the management that the contractor under whom they were employed was awarded occasionally contract for non-prohibited types of job, as such, there is no merit in the workmen's demand. It has also been submitted on behalf of the workmen that Form 'C' register has not been produced by the management and simply produced a chart dated 17-10-88 and 5-1-89 under the signature of the Agent, Basudeopur Colliery, in which the attendance given in respect of these workers differed. These two charts were marked Ext. 'A' and 'B' and the matter was also enquired into by the L.E.O., Katrasgarh on 30-9-89 by issuing a formal registered notice dated 13-9-89 to Agent, contractor and the concerned union about his inspection on 30-9-89 at 9 A.M. when he would inspect the record of Ramyash Upadhyaya, Contractor in respect of these workers. The registered notice of the L.E.O. is marked Ext. 'C'. The L.E.O. submitted the report to the A.L.C. (C) and regarding work done by the workers Sri Chakraborty, Overman Incharge and Sri Noor Mohammad, Mining Sirdar issued certificated in writing that the concerned workmen were working as stone cutter under Sri Ramyash Upadhyaya in drifting work through stone, which is marked Ext. 'D'. The Government of India, Ministry of Labour in their Notification under Sec. 10 of the contract Labour (Regulation & Abolition) Act, 1970 prohibited the employment of contract labour in the work of stone cutting. The management has taken the job of stone cutting in which the concerned workmen have worked which is prohibited under Sec. 10 of C.L.R.A. Act, 1970. In the year 1986 the management appointed Banerjee Committee to recommend ways and means to promote the betterment of the B.C.C.L. and this Committee recommended that the B.C.C.L. should have 5000 Badli miner/loader to fill up the vacancies of miner/loader caused due to heavy absenteeism. The management discussed the matter in consultative committee meeting held on 26-4-86 in which it was decided that the demand for additional badli miner/loader should be met amongst other by regularising contract workers who have worked in prohibited category for 190 days in a calendar year during the period from 1983, 1984, 1985 and 1986. This policy was circulated by the D.P. in his letter No. D(P)/P5/86/2649-949(11) dated 8/9-5-86 addressed to all General Managers, which is marked Ext. 'E'. These workmen were entitled for regularisation but since the management did not co-operate and did not even produce the Form 'C' register under the false pretext of office shifting thereby the records were misplaced. It is evident from Ext. W-4. So, they prayed that they may be regularised and be asked to pay them wages with restopective effect.

3. The management has filed written statement stating that the reference is not maintainable. There is no employer-employee relationship between the persons named in the reference and the employers. The concerned persons are

not workmen of Basudeopur colliery. They are outsiders. There can be no industrial dispute between these persons and the employers in relation to Basudeopur colliery of M/s. B.C.C. Ltd. These persons are the contractor's workmen and under contract Labour (Regulation & Abolition) Act, 1970 any dispute with respect to contractor's workmen can be resolved under the C.L. (R&A) Act and not under Industrial Disputes Act. The order of reference is bad for non-joinder and mis-joinder of parties as the contractor under whom they alleged to have worked have not been made parties to the dispute. It has also been stated that the workmen have worked with the contractor, Ramyas Upadhyay, who was employed to carry out certain work of non-prohibited category, like, line packing, C.I.M.S. pipe carrying and joining etc. As the contractor, Ramyas Upadhyaya, was not allotted any prohibited category of job, so the question of taking work of prohibited category from these persons could not arise at all. It has also been mentioned that these persons hardly worked for 10-45 days in a year in non-prohibited item of work under the contractor, Ramyas Upadhyay.

4. Rejoinder has been filed by the employers stating same thing which has been stated in the written statement. The workmen also filed rejoinder stating something which has been stated in their written statement. They have also filed a judgement of the Hon'ble Supreme Court in Special Leave Petition No. 7415 of 1986 in which five workmen have been found to be regularised by the Hon'ble Supreme Court.

5. The management has produced MW-1- N.K. Sharma, MW-2-F. Minz and also filed paper, Ext. M-1.

The workmen have produced WW-1- Fuleshwar Yadav, WW-2-G.L. Chakraborty and WW-3 C.M. Sharma and filed papers, Exs. W-1, W-1/1, W-1/2, W-2, W-3 and W-4

6. The main argument on behalf of the workmen is that they have to be regularised as they have worked in prohibited category of job through contractor, Ramyas Upadhyaya. But Sri Upadhyaya under whom they have worked has not been produced as witness who may have stated whether these persons have worked under him. There is no document which may show that any attendance was taken in the period which may show that they have worked in the colliery of the management. Paper filed by the management, Ext.M-1 shows that these workmen worked as contract labour for the year 1983, 1984 and 1985 only. Fuleshwar Yadav worked in the year 1983-4 days, in 1984-94 days and in 1985-10 days. Tribeni Yadav worked in the year 1983-2 days, in 1984-54 days and Dina Nath Yadav worked in the year 1984-88 days and in 1985-5 days only, which shows that no workman has worked in any calendar year 190 days, so that any benefit of Banerjee Committee can be given to them.

7. W.W.1- Fuleshwar Yadav has stated in cross-examination that Ramyas Upadhyaya used to get work from

the colliery on contract basis and Ramyas Upadhyaya used to pay our wages and they have worked under Ramyas Upadhyaya. In this respect WW-2 G.L. Chakraborty stated in cross-examination that he has got no paper to show that these workmen were being paid through contractor, Ramyas Upadhyaya. Payment registers were being maintained by the contractor. Regarding work done he stated that 190 days work has been done by the workmen, but as per paper filed by the management (Ex.M-1) it shows that none of the workman has worked for 190 days in a year.

8. Main stress has been made by the workmen representative on WW-2 and WW-3. WW-2 -G.L. Chakraborty, who has worked at Basudeopur colliery from 1977 to 1999 as Sr. Overman and who has proved Ext. W-1/and W-1/2 and has stated that they have certified that the persons worked under Ramyas Upadhyaya, contractor, in drifting through stone. This certificate has been issued on 17-11-87 which has been moved by the concerned workmen to the A.L.C. (C) No report has been called regarding this application by the management through A.L.C.(C). Dhanbad, on which basis this witness has got any authority to certify. If only shows that with the connivance of the workman he has given false certificate because of the fact that the work done by any workman only can be proved by Attendance Register, Payment Register and not by a certificate issued by a person who has not been authorised by the management to issue such certificate. It shows his connivance that if he was Sr. Overman and he has never complained, as per his cross-examination, to the management regarding work done in prohibited category of job, as neither any document filed by the workman nor this witness that the management has given order for taking work of prohibited category from these workmen. As per paper filed by the management it shows that only repairing and removing work order has been placed to Ramyas Upadhyaya as per paper Nos. 27 to 48. WW-3 has stated in cross-examination that he has not seen work order relating to Ramyas Upadhyaya. There is no record with me to show how many days they have worked. It only shows that these workmen have worked under the contractor, Ramyas Upadhyaya 190 days in a year, so they cannot be regularised.

9. The management has also referred the decisions of Hon'ble Supreme Court reported in 2001 Lab. I. C. 3656 between steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others, and 2006(2) JI.JR 282 between Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors. in which the Hon'ble Supreme Court held that the Courts should desist from issuing orders for continuance of those who have not secured regular appointments as per established procedure-wide power under Article 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling whole scheme of public employment— Courts are not to ignore encourage or approve appointments made

or engagements given outside the constitutional scheme. The Hon'ble Supreme Court also held that contractual appointment ends with the contract-daily wage or casual appointment ends with discontinuation-daily wages form a class by themselves- they cannot claim discrimination with regular employees.

10. In view of the facts and circumstances stated above, the concerned persons, namely, S/Sri Fuleshwar Yadav, Triveni Yadav, Dinanath Prasad, Ram Lagan Paswan and Ramdeo Prasad cannot be deemed as employees of the management of Basudeopur Colliery of M/s. B.C.C. Ltd. and their demand for regularisation in the service of the management is not justified. Accordingly, the concerned persons are not entitled to any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 22 अगस्त, 2008

क्र.आ. 2644.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बीकानेर क्ले एण्ड केमिकल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सीआईटी-37/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2008 को प्राप्त हुआ था।

[सं. एल-29011/23/1990-आई आर(एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CIT-37/1990) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Bikaner Clay and Chemicals and their workman, which was received by the Central Government on 22-8-2008.

[No. L-29011/23/1990-IR (M)]

KAMAL BAKHRU, Desk Officer

अनुषन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 37/1990

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल.-29011/23/90-आई.आर.(विविध) दि. जून 1990
सैक्रेट्री, खदान मजदूर यूनियन, श्री कोलायत जी, जिला बीकानेर।
—प्राथी

बनाम

मैसर्स बीकानेर क्ले एण्ड केमिकल्स (अनिल कुमार दिविजन) बीकानेर।

—अप्राथी

उपस्थित

पीठासीन अधिकारी : श्री गौतम प्रकाश शर्मा, आर. एच. जे. एस.

प्राथी की ओर से : श्री कुणाल रावत

अप्राथी की ओर से : श्री मनोज कुमार शर्मा

दिनांक अवाई: 2-8-2008

अवाई

1. केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्दिष्ट किया है :

"Whether the action of the management of M/s. Bikaner Clay and Chemicals, Bikaner in terminating the services of S/Shri Manak Ram, Ashuram, Smt. Patasi, Smt. Pushpa and Smt. Kojaki, Beldars w.e.f. 2-2-86 is justified? If not, what relief the workmen concerned are entitled to?"

2. प्राथी यूनियन की ओर से रैफरेंस के संबंध में स्टेटमेंट ऑफ क्लेम पेश हुआ जिसके अनुसार बताया गया कि रैफरेंस में वर्णित श्रमिकगण की नियुक्ति विपक्षी संस्थान में बेसदार के पद पर 2-2-86 से की गई है तथा वे सभी अपने पद पर नियुक्ति दिनांक 2-2-86 से लगातार व ईमानदारी से कार्य करते रहे हैं किन्तु अप्राथी ने श्रमिकगण को परेशान करने की नीयत से दिनांक 2-2-89 से उन्हें सेवा मुक्त कर दिया जो कि गैर कानूनी है। श्रमिकों ने सेवा मुक्ति से पूर्व विपक्षी संस्थान में एक वर्ष की सेवा अवधि में 240 दिन से अधिक कार्य किया है किन्तु उन्हें कोई छुट्टी का मुआवजा नहीं दिया गया एवं न ही विपक्षी संस्थान ने श्रमिकों की सेवा समाप्ति से पूर्व कोई वरिष्ठता सूची जारी की है जो करनी चाहिये थी तथा श्रमिकों की संस्थान से छुट्टी के संबंध में राज्य सरकार से कोई अनुमति भी नहीं ली है। इस प्रकार जो सेवा समाप्ति श्रमिकों की विपक्षी संस्थान ने की है उसमें 25 एफ, जी व एच औद्योगिक विवाद अधिनियम, 1947 (जो आगे निर्णय में मात्र अधिनियम लिखा जायेगा) तथा नियम 77 का सीधा उल्लंघन किया है, अतः प्राथीगण की सेवा समाप्ति का आदेश अपास्त होने योग्य है।

3. अप्राथी की ओर से स्टेटमेंट ऑफ क्लेम का जवाब पेश हुआ जिसमें बताया कि रैफरेंस में वर्णित श्रमिक उनके यहां कभी भी कार्यरत नहीं रहे अतः उनकी सेवा समाप्ति का प्रश्न ही पैदा नहीं होता। आगे कथन किया कि माह फरवरी में उनकी सेवा समाप्त किये जाने का उल्लेख है जबकि इस अवधि में खनन कार्य बंद रहता है। मजदूर उत्तर बताते हुए बताया कि दिनांक 2-2-86 को रैफरेंस में वर्णित श्रमिकों को कार्य पर कभी नहीं रखा गया था। माह फरवरी, 1986 में खान भी बंद हो चुकी थी। अपने जवाब के पैरा सं. 4 में दर्शाया कि श्रमिकगण दूसरे संस्थानों में कार्यरत थे जिनका वर्णन भी इस पैरा में दिया गया है। आगे बताया कि श्रमिकगण ने अप्राथी

संस्थान में एक वर्ष में 240 दिन कार्य किया, यह कथन गलत है। अतः धारा 25-एफ व 25-जी अधिनियम के प्रावधान लागू नहीं होते एवं धारा 25-एच अधिनियम के संबंध में उनका कथन है कि इन श्रमिकों की सेवा समाप्ति के बाद किन श्रमिकगण को भर्ती को गई, प्राथीगण की ओर से नहीं बताया गया है। अतः अप्राथी का कथन रहा है कि प्राथी का क्लेम स्वीकार होने योग्य नहीं है जो अस्वीकार किया जाये।

4. साक्ष्य में यूनियन की ओर से श्रमिकगण श्रीमती पुष्पा, श्री आशुराम, श्रीमती कोजकी पत्नी श्री खडग सिंह, श्री माणक राम, श्रीमती पतासी पत्नी श्री माणक व सुशील सिंह के बयान करवाये। अप्राथी की ओर से साक्ष्य में श्री अनिल चांदना का शपथ पत्र पेश हुआ किन्तु प्राथी प्रतिनिधि जिरह के लिए उपस्थित नहीं होने से इस मवाद से उनकी जिरह का हक बंद किया गया।

5. बहस सुनी, पत्रावली का अवलोकन किया। प्राथी प्रतिनिधि की बहस है कि यूनियन की ओर से श्रमिकगण सर्वश्री माणक राम, आशुराम, श्रीमती पतासी, श्रीमती कोजकी एवं श्रीमती पुष्पा के लिए विवाद लाया गया है। ये सभी श्रमिकगण अप्राथी संस्थान मैसर्स बोकानेर ब्ले एण्ड कर्मोक्लस में दिनांक 2-2-86 से कार्यरत थे। इस संबंध में इन सभी श्रमिकगण को साक्ष्य शपथ पत्र के रूप में हुई है एवं इन्होंने अपने शपथ पत्र में इस कथन का उल्लेख किया है। उनकी आगे बहस है कि दिनांक 2-2-86 से तीन वर्ष बाद 2-2-89 को इन श्रमिकगण की सेवाएं समाप्त कर दी गई। सेवा समाप्ति से पूर्व श्रमिकों को न तो कोई चार्ज शीट दी गई न ही कोई सुनवाई का अवसर दिया गया जबकि श्रमिकगणक ने अप्राथी संस्थान में एक वर्ष की अवधि में 240 दिन से अधिक कार्य किया है एवं उन्हें बिना सुनवाई का अवसर दिये एवं बिना छंटनी का मुआवजा आदि दिये सेवा समाप्ति की गई है अतः अप्राथी का यह कथन अधिनियम की धारा 25-एफ का स्पष्ट उल्लंघन है। उनकी अगे बहस है कि श्रमिकगण की सेवा समाप्ति के समय कोई वरिष्ठता सूची जारी नहीं की गई एवं राज्य सरकार से अप्राथी संस्थान ने श्रमिकों की छंटनी संबंधी कोई अनुमति भी नहीं ली जिससे भी प्राथीगण की सेवा समाप्ति का आदेश अवैध एवं अनुचित है। अप्राथी संस्थान ने श्रमिकों को सेवा से अलग करने के बाद काफी नये श्रमिकों को भी नियुक्त करे हैं किन्तु उक्त नियुक्तियों से पूर्व प्राथी श्रमिकगण को नियुक्ति का कोई अवसर नहीं दिया जो धारा 25 एच व नियम 77 का सीधा उल्लंघन है। उनकी बहस है कि श्रमिकगण ने अपने शपथ पत्र में इन सभी तथ्यों का उल्लेख किया है। अप्राथी संस्थान ने इन श्रमिकों को उनके द्वारा नियुक्त नहीं होने का उल्लेख किया है लेकिन इस संबंध में कोई रिकार्ड उनकी ओर से पेश नहीं हुआ है। नियुक्ति संबंधी जो भी रिकार्ड था वह अप्राथी संस्थान के पास था जो अप्राथी संस्थान को पेश करना चाहिये था। उनकी यह भी बहस है कि अप्राथी ने अपने जवाब के पैरा 4 में वर्णित अनुसार श्रमिकगण को दूसरे संस्थान में कार्यरत होता बताया है लेकिन इस संबंध में कोई भी साक्ष्य पेश नहीं को न ही कोई रिकार्ड पेश किया और न ही उन संस्थान के मालिक या मैनेजर आदि को साक्ष्य में पेश किया। इस तरह से प्राथी प्रतिनिधि की बहस है कि रैफरेंस में

वर्णित श्रमिकगण सर्वश्री माणक राम, आशुराम, श्रीमती पतासी, श्रीमती पुष्पा व श्रीमती कोजकी की सेवाएं अप्राथी द्वारा समाप्त करने का निर्णय अवैधानिक व अनुचित है जो अपास्त किये जाने योग्य है।

6. अप्राथी प्रतिनिधि ने अपनी बहस में बताया कि रैफरेंस में जो अनुसूची है उसमें सेवा समाप्ति की तिथि 2-2-86 उल्लेखित है जबकि स्टेटमेंट ऑफ क्लेम में 2-2-86 भर्ती की तिथि बताई गई है व सेवा समाप्ति की तिथि 2-2-89 बताई गई है। उनकी बहस है कि श्रमिकगण के जो शपथ पत्र पेश हुए हैं उनमें नियुक्ति तिथि 2-2-86 है व 2-2-89 को उन्हें सेवा से हटा दिया गया, उल्लेख है। इस तरह से उनकी बहस है कि जो साक्ष्य पेश हुई है व स्टेटमेंट ऑफ क्लेम में उल्लेखित तथ्य रैफरेंस को अनुसूची के विपरीत है और इस आधार पर ही प्राथीगण कोई अनुतोष पाने के अधिकारी नहीं है। आगे बहस है कि श्रमिकगण ने प्राथी संस्थान में कार्य किया हो ऐसा कोई नियुक्ति आदेश पेश नहीं हुआ है न ही उनकी ओर से कोई पे-स्लिप आदि पेश हुई है जबकि अप्राथी संस्थान का कथन है कि उनके संस्थान में रैफरेंस में वर्णित कोई श्रमिक सेवागत नहीं रहे थे। दस्तावेजात जो प्राथी संस्थान से इस अधीन के लिए पेश हुए हैं यद्यपि जो श्रमिक नियुक्त थे उनके रजिस्टर के अनुसार इन श्रमिकगण का नाम उक्त रजिस्टर में नहीं है। अप्राथी का शपथ पत्र भी संलग्न है, उनके बहस है कि श्रमिकगण ने अप्राथी संस्थान में सेवा समाप्ति के पूर्व ही एक वर्ष की अवधि में 240 दिन लगातार कार्य किया, सिद्ध करने का भार श्रमिकगण पर था किन्तु इस आशय की कोई साक्ष्य पत्रावली पर श्रमिकगण की ओर से नहीं लाई गई है। उनकी बहस है कि श्रमिकगण से जो जिरह हुई है उनमें उनसे 240 दिन कार्य करने के संबंध में जो जिरह हुई उसमें भी यह बताया कि एक महीने में कभी 15 दिन कभी 20 दिन काम किया, लगातार काम नहीं किया। माणक राम की जिरह में भी आया है कि उसे पता नहीं कि उसने एक वर्ष में 240 दिन काम किया हो। यूनियन के सचिव श्री सुशील कुमार सिंह का शपथ पत्र पेश हुआ है उसमें भी 2-2-86 को भर्ती होना व फरवरी 89 में हटाये जाने का तथ्य अपनी जिरह में भी स्वीकार किया है जबकि रैफरेंस में ऐसी बात नहीं है। इस तरह से उनकी बहस है कि प्राथीगण का क्लेम स्वीकार होने योग्य नहीं है।

7. मैंने बहस पर गौर किया। रैफरेंस में श्रमिकगण की सेवाएं 2-2-86 को समाप्त करने का उल्लेख है जबकि प्राथीगण ने अपने स्टेटमेंट ऑफ क्लेम व अपनी बहस में यह तिथि भर्ती की बताई है तथा 2-2-89 को उन्हें सेवा से हटाया गया, उल्लेख है। बस्तुस्थिति क्या है, इस संबंध में प्राथीगण की ओर से कोई कार्यवाही नहीं की गई है न ही कोई रैफरेंस में संलग्न कराया गया है। अप्राथी की ओर से श्री अनिल चांदना के शपथ पत्र पेश हुआ है जिसके पैरा 4 में माह फरवरी, 1986 में गलतान कर होने का उल्लेख है। स्टेटमेंट ऑफ क्लेम में प्राथीगण की ओर से धारा 25-एफ, जी, व एच तथा नियम 77 के उल्लंघन का उल्लेख है लेकिन प्राथीगण ने सेवा समाप्ति की तिथि 2-2-86 से पूर्व के एक वर्ष में 240 दिन का कार्य किया हो, ऐसी कोई साक्ष्य प्राथीगण की ओर से नहीं आई है

बलिक प्राथीगण का कथन सेवा समाप्ति के संबंध में दिनांक 2-2-89 बताया गया है। इस तरह से रैफरेंस में वर्णित तारीख से विरोधाभासी साक्ष्य प्राथीगण की ओर से आई है एवं इस विरोधाभासी साक्ष्य का कोई स्पष्टीकरण प्राथीगण की ओर से नहीं दिया गया है। अब प्राथीगण की सेवा 240 दिन सेवा समाप्ति के एक वर्ष के पूर्व में लगातार किया जाना सिद्ध नहीं है एवं उसे सिद्ध करने का भार प्राथीगण पर ही था, ऐसे में धारा 25-एफ अधिनियम का उल्लंघन होना नहीं पाया गया है। धारा 25-जी व एच अधिनियम नियम-77 के संबंध में मेरा विवेचन है कि कोई वरिष्ठता सूची अप्राथी संस्थान में थी एवं उक्त वरिष्ठता सूची में प्राथीगण का नाम हो, ऐसा कथन प्राथीगण का नहीं रहा है। इसके विपरीत अप्राथी विभाग का कथन है कि प्राथीगण उनके यहां काम नहीं करके दूसरे संस्थान में, जिसका उल्लेख जवाब स्टेटमेंट ऑफ क्लेम के पैरा 4 में किया गया है, में नियुक्त थे एवं इसका कोई प्रत्युत्तर अप्राथीगण की ओर से नहीं दिया गया है। इस तरह से धारा 25-जी व एच अधिनियम का व नियम-77 का उल्लंघन होना भी प्राथीगण की ओर से सिद्ध नहीं हुआ है। इस सारे विवेचन से मेरा निष्कर्ष है कि प्राथीगण अपने क्लेम को सिद्ध नहीं कर पाये हैं, अतः प्रकरण में निम्न आशय का आवाह पारित किया जाता है:

"मैसर्स बीकानेर क्ले एण्ड कैमोकल्स, बीकानेर के प्रबंधन द्वारा सर्वज्ञी माणक राम, आशुराम, श्रीमती पतासी, श्रीमती पुष्पा व श्रीमती कोंजकी, बेलहारों की सेवा समाप्त किये जाने की कार्यवाही उचित एवं वैध है। प्राथीगण कोई अनुतोष प्राप्त करने के अधिकारी नहीं है।"

15. अवार्ड आज दिनांक 2-8-2008 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान कॉपर लिमिटेड के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या सीआईटी- 59/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

[सं. एल-43012/1/1996-आई आर(एम.)]

कमल बाखरू, डैस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No CIT-59/1996) of the Central Govt. Indus. Tribunal-cum-Labour Court Jaipur now as shown in the Annexure, in the

Industrial Dispute between the employers in relation to the management of Hindustan Copper Ltd. and their workman, which was received by the Central Government on 22-8-2008.

[No. L-43012/1/1996-IR (M)]

KAMAL BAKHRU, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 59/96

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल-43012/1/96-आई.आर.(विविध) दि. 27-11-96 श्री सुरेश चन्द द्वारा श्री ऋषभ चंद जैन, 80 बजरंग विहार, गोपालपुरा रेलवे फाटक के पास, टैंक रोड, जयपुर। --प्राथी

धनाम

एजीक्यूटिव डायरेक्टर, हिन्दुस्तान कॉपर लि. खेतड़ी कॉपर काम्पलेक्स, खेतड़ी नगर, झुंझनू।

--अप्राथी

उपस्थित

पीठासीन अधिकारी : श्री गौतम प्रकाश शर्मा, आर. एच. जे. एस.

प्राथी की ओर से : श्री आर. सी. जैन

अप्राथी की ओर से : श्री मनोज कुमार शर्मा

दिनांक अवार्ड: 30-7-2008

अवार्ड

1. केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्देशित किया है :

"Whether the action of the management of Khetri Copper Complex, Hindustan Copper Ltd. Khetri Nagar, Dist. Jhunjhunu in terminating the services of Shri Suresh Chand w.e.f. 30-8-92 after employing him as Casual workman w.e.f. 3-5-83 to 30-8-92, intermittently without giving any opportunity of employment before employing workman junior to him, is justified? If not, to what relief the workmen is entitled and from what date?"

2. प्राथी श्रमिक की ओर से विवाद की पुष्टि में अपना स्टेटमेंट ऑफ क्लेम पेश किया गया जिसके सौक्ष्ण्य तथ्य इस प्रकार हैं कि प्राथी अप्राथी संस्थान में दिनांक 3-5-83 से आकस्मिक श्रमिक के रूप में कार्य कर रहा था। नियुक्ति लिथि से प्राथी लगातार कार्य कर रहा था किन्तु अप्राथी के अधिकारियों ने दिनांक 30-8-92 से प्राथी को कार्य देना बंद कर दिया अर्थात् सेवा मुक्त कर दिया। उक्त सेवा मुक्ति को प्राथी ने इन आधारों पर अनुचित व अवैध बताया कि सेवा मुक्ति से पूर्व उसे कोई नोटिस या नोटिस वॉन्तन तथा मुआवजे का भुगतान नहीं किया गया जो औद्योगिक विवाद अधिनियम

1947 (जो निर्णय में आगे मात्र अधिनियम लिखा जायेगा) की धारा 25-एफ की अवहेलना है। सेवा मुक्ति के समान अधिनियम की धारा 25-जी व अधिनियम के नियम 77 के तहत कोई वरिष्ठता सूची भी जारी नहीं की। प्रार्थी को सेवा मुक्त करने के पश्चात जो कार्य प्रार्थी करता था उस कार्य के लिए नये श्रमिकों की भर्ती की है जो धारा 25-एच का उल्लंघन है तथा अधिनियम की धारा 25-एन के तहत प्रार्थी को सेवा मुक्त करने से पूर्व सक्षम सरकार की अनुमति भी नहीं ली। अतः सेवा मुक्ति आदेश अनुचित व अवैध बताते हुए प्रार्थना की कि सेवा मुक्ति आदेश दिनांक 30-8-82 को अनुचित व अवैध घोषित किया जावे, प्रार्थी की सेवाएं निरन्तर मानते हुए समस्त पिछला वेतन व अन्य लाभ दिलवाये जाने का अवाइर पारित किया जावे।

3. अप्रार्थी की ओर से क्लेम का जवाब पेश कर प्रारंभिक आपत्तियां अटार्इ गई हैं कि प्रार्थी को आकास्मिक श्रमिक के रूप में अप्रार्थी संस्थान में विभिन्न अवधियों में नियोजित किया गया जिससे नियोजन का कोई कानूनी अधिकार प्रार्थी को प्राप्त नहीं होता। आकास्मिक कार्यों के लिए आकास्मिक श्रमिकों को रखने को व्यवस्था संस्थान में रजिस्टर्ड युनियन की सहमति से प्रचलित है, ऐसे में कंट सरकार द्वारा भेजा गया विवाद 'औद्योगिक विवाद' नहीं है और अधिकरण के क्षेत्राधिकार में नहीं आता है। जवाब में आगे बताया कि प्रार्थी को आकास्मिक कार्यों हेतु समय समय पर संविदा स्वरूप रखा जाता था और कार्य सम्पूर्ण होने पर उसका नियोजन स्वतः ही समाप्त हो जाता था, अतः प्रार्थी की सेवामुक्ति छंटनी की परिभाषा में नहीं आती बल्कि अधिनियम की धारा 2(00)(बीबी) के प्रावधानों के अन्तर्गत आती है जो कार्य प्रारंभ के साथ शुरू होकर कार्य के समाप्ति के साथ ही समाप्त हो जाती है। इन आधारों पर क्लेम निरस्त होने योग्य बताया।

4. गुणावगुण पर अप्रार्थी का जवाब है कि प्रार्थी को आकास्मिक कार्यों हेतु संविदा अनुसार समय समय पर रखा गया दिनांक 30-8-92 तक की अवधि में प्रार्थी ने आकास्मिक कार्य पर स्व-सहमति से नियोजन प्राप्त किया जो कार्य समाप्ति के साथ स्वतः ही प्रार्थी की पूर्ण जानकारी के अनुसार समाप्त हो गया, अतः प्रार्थी का यह कथन कि बिना कारण उसे सेवा से पृथक कर दिया, गलत है। प्रार्थी ने अंतिम बार दिनांक 29-8-92 तक संविदा एवं अवस्था के अनुसार कार्य किया। आकास्मिक श्रमिक पर अधिनियम के प्रावधान नहीं होते अतः धारा 25-एफ, जी, एच व एन अधिनियम के प्रावधानों का कोई उल्लंघन नहीं हुआ है न ही किसी श्रम कानून का उल्लंघन किया गया है। अतः प्रार्थी का क्लेम खारिज होने योग्य बताया।

5. साक्ष्य में प्रार्थी सुरेश चंद स्वयं का शपथ पत्र पेश हुआ है जिससे अप्रार्थी प्रतिनिधि ने जिरह की है। अप्रार्थी की ओर से श्री जगदीश लाल एवं श्री भागीरथ सिंह के शपथ पत्र पेश हुए हैं जिससे प्रार्थी प्रतिनिधि ने जिरह की है। कुछ दस्तावेजात भी प्रदर्श कराये गये हैं जिनका विवेचन यथा स्थान किया जायेगा।

6. मैंने दोनों पक्षों की बहस सुनी, पत्रावली को अवलोकन किया। प्रकरण में मेरे समक्ष निम्न बिन्दु तय करने हेतु है :

1. क्या प्रार्थी श्रमिक ने विपक्षी संस्थान में दिनांक 3-5-83 में आकास्मिक श्रमिक के रूप में सेवा मुक्ति की दिनांक 30-8-92 तक कार्य किया ?

2. क्या प्रार्थी की सेवा श्रमिक अधिनियम की धारा 25-एफ जी, एच व औद्योगिक विवाद कंट्रोल नियम 1957 के नियम 77-78 का उल्लंघन कर की गई ?

3. क्या प्रार्थी की सेवा मुक्ति छंटनी की परिभाषा में नहीं आती और धारा 2(00)(बीबी) अधिनियम के अनुसार प्रार्थी का नियोजन आरंभ व समाप्त होता था ?

4. अनुतोष ?

7. प्रार्थी श्रमिक की ओर से प्रतिनिधि ने अपनी बहस में बताया कि प्रार्थी को नियुक्ति आकास्मिक श्रमिक के रूप में दिनांक 3-5-83 से हुई, इस तथ्य को स्पष्ट रूप से इन्कार नहीं किया गया है। अतः यह सिद्ध है कि दिनांक 3-5-83 से अप्रार्थी संस्थान में आकास्मिक श्रमिक के रूप में प्रार्थी नियुक्त था। उनकी बात है कि इस दिनांक से उसकी सेवा समाप्ति की तिथि 30-8-92 तक प्रार्थी ने विपक्षी संस्थान में निरन्तर व बराबर कार्य किया एवं उसे सेवा मुक्त किये जाने से पूर्व उसे न तो कोई नोटिस दिया गया न ही नोटिस वेतन का भुगतान किया गया तथा धारा 25-एफ अधिनियम के अनुसार मुआवजे का भुगतान भी नहीं किया गया। अप्रार्थी संस्थान ने प्रार्थी की सेवा समाप्ति के समय कोई वरिष्ठता सूची जारी नहीं की तथा प्रार्थी से क्रमिक श्रमिकों जिनकी सूची प्रदर्श दृश्य में पेश की है को नियमित वेतन भुगतान भी दी गई है। प्रार्थी की सेवा समाप्ति के समय विपक्षी संस्थान में हजारों श्रमिक कार्यरत थे फिर भी अप्रार्थी संस्थान की ओर से प्रार्थी की सेवा समाप्त करने से पूर्व सक्षम सरकार की अनुमति नहीं ली। उनकी आगे बहस है कि एक आवेदन प्रार्थी की ओर से दसालेज तलब कराने का पेश किया जिसमें आदेश भी दिये, अप्रार्थी द्वारा कुछ दस्तावेज पेश किये एवं कुछ पेश नहीं किये क्योंकि दैनिक वेतन भारी के मामले में रिकार्ड पेश करने का विपक्षी संस्थान का होता है। अतः अप्रार्थी संस्थान के विरुद्ध प्रतिज्ञा अवधारणा ली जाकर प्रार्थी के मामले को सिद्ध माना जाये। प्रार्थी का आवेदन निश्चित अवधि का हो, सिद्ध नहीं हुआ है तथा कितने मरिदा के तहत हो। ऐसी स्थिति भी पेश नहीं हुई है। इस तरह से उनकी बहस है कि प्रार्थी की सेवा समाप्ति का प्रश्नगत आदेश अवैध व अनुचित है एवं अधान होने योग्य है। प्रतिनिधि ने अपनी बहस को संस्थान में निम्नोक्त दृष्टान्त पेश किये :

- 2003 (97) एफ.एल.अन.1081 तस.सी। एस.एम. श्रीवांगकर विरुद्ध टेलीकॉम डिस्ट्रिक्ट मैनेजर कर्नाटक
- 2006 एस. सी. सी. (एन.एल.एम.) पेज 574 मुख्य सचिव, हरियाणा राज्य व अन्य विरुद्ध सेतारम।
- 1996(3) एल.एल.जे. पेज 1126 (पंजाब व हरियाणा) मीरखुराम विरुद्ध पोडानोन अधिकारी औद्योगिक न्यायाधिकरण रोहताक।

4. 1994 II एल. एल. जे. 1127 (उड़ीसा) चैयरमैन एवं एम. डी उड़ीसा पथ परिवहन निगम विरुद्ध रमेश चंद गौड़ा ।
5. 2003(4) एल. एल. एन. 954, राजस्थान राज्य विरुद्ध शेरसिंह व अन्य ।
6. 2000(3) आर.एल.आर.-447 (राजस्थान) म्युनीसीपल कार्पोरेशन कोटा विरुद्ध रामचन्द्र श्रुंगी ।
7. 1997 डब्ल्यू. एल. सी. (यू. सी.) 114 (राज.) राजस्थान राज्य विरुद्ध बुट्टन लाल व अन्य ।
8. (1999)3 एस. सी. सी. 14 समिष्ठा दुबे विरुद्ध सिटी बोर्ड इटावा ।
9. 2004(3) एल.एल.जे.-555(एस.सी.) कृष्ण बहादुर विरुद्ध पूरणा ध्वेतर व अन्य ।
10. 1991(1) एल.एल.आर. पेज 577 (राजस्थान) रेलवे लेबर यूनियन विरुद्ध नार्दन रेलवे ।
11. डब्ल्यू. एल. आर. 1995 (राज.) 71 भगचंद जैन विरुद्ध राजस्थान राज्य पाठ्य पुस्तक मण्डल ।
12. 1991(2) आर.एल.आर. पेज 691 (राजस्थान) सूर्य प्रकाश शर्मा विरुद्ध राजस्थान टैक्सट बुक बोर्ड ।
13. 1997 डब्ल्यू. एल.सी. (यू. सी.) पेज 104(राजस्थान) पटवार प्रशिक्षण केन्द्र, डींग विरुद्ध कैलाश चन्द्र व अन्य ।
14. 2002(1) डब्ल्यू. एल. सी. पेज 296 (राजस्थान) अरावली क्षेत्रीय ग्रामीण बैंक सवाई माधोपुर विरुद्ध पीठासीन अधिकारी सी.जी.आई.टी. जयपुर व अन्य ।
15. 2005 डब्ल्यू. एल. सी.(यू. सी.)(राज.) पेज 737 निदेशक, दूरदर्शन केन्द्र विरुद्ध जज, सी.आई.टी. व अन्य ।
16. 1992(3) डब्ल्यू. एल. सी. (राज.) 56 कन्हैया लाल शर्मा विरुद्ध राजस्थान राज्य ।
17. 1994 III एल. एल. जे. 848 (गुजरात) गुजरात राज्य मशीन टूल्स कार्पोरेशन लि. विरुद्ध दीपक जे. देसाई ।
18. 2005(8) आर. डी. डी. 3280 (राजस्थान) पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व अन्य ।
19. ए. आई. आर. 1979 (एस. सी.) 75 मैसर्स हिन्दुस्तान टिन वर्क्स लि. विरुद्ध श्रमिकगण ।
20. 1984(48) एफ.एल.आर. 310 (एस. सी.) गैमन इण्डिया लि. विरुद्ध निरंजनदास ।
21. 1997 III एल.एल.जे. 439 (राजस्थान) ओम प्रकाश रैगर विरुद्ध राजस्थान राज्य ।
22. 2005 III सी. एल. आर. 1078 (एस. सी.) आर. एम. येलाटी विरुद्ध अधिशासी अभियन्ता ।
23. 2001(1) एल. एल. एन. (एस. सी.) 852 विक्रमादित्य पाण्डे विरुद्ध औद्योगिक न्यायाधिकरण, लखनऊ ।
24. 2000(III) एल. एल. जे. 1678 (सप्ली) (एस.सी.) पी.जी. आई. ऑफ मेडिकल एजुकेशन विरुद्ध बी. कं. शर्मा ।
25. 205 लैब.आई.सी. 2279 (एस. सी.) बैंक ऑफ बड़ौदा विरुद्ध घेवर भाई हरजी भाई रावारी ।
26. आर. एल. आर. 1999(1)(राजस्थान) 579 अधिशासी अभियन्ता सी.ए.डी. कोटा विरुद्ध सत्यनारायण व अन्य ।
27. 1993(3) एल.एल.जे. पेज 730 (पंजाब व हरियाणा) भूषण लाल विरुद्ध पीठासीन अधिकारी श्रम न्यायालय, पटियाला ।
28. 1999(4) एस. एल. आर. (डी.बी.पी. एण्ड एच.) 476 हरियाणा राज्य विरुद्ध पीठासीन अधिकारी, श्रम न्यायालय प्रथम फरीदाबाद ।
29. 2005 आर.डी.डी. 1015(राजस्थान) मैनेजर, मैसर्स मित्तल मैनुफैक्चरिंग कम्पनी विरुद्ध चौथा राम ।

8. अप्राथी प्रतिनिधि ने अपनी बहस में बताया कि प्राथी स्वयं ने अपने को आकस्मिक श्रमिक होना स्वीकार किया है । इसके अतिरिक्त अप्राथी की ओर से एंगेजमेंट आदेश भी पेश हुआ है अतः कार्य समाप्त होते ही उसकी नियुक्ति समाप्त होना माना जाये । प्राथी की नियुक्ति एंगेजमेंट आर्डर के अनुसार हुई, इस तथ्य को प्राथी ने जिरह में भी स्वीकार किया है । उनकी आगे बहस है कि प्राथी का नियोजन "कान्ट्रैक्ट फॉर सर्विस" था न कि "कान्ट्रैक्ट ऑफ सर्विस" । उनकी आगे बहस है कि वरिष्ठता सूची प्रदर्श डब्ल्यू-1 को प्राथी ने साबित नहीं किया है । इस तरह से प्राथी जो कि आकस्मिक श्रमिक के रूप में नियुक्त हुआ था तथा अप्राथी संस्थान में आकस्मिक श्रमिकों की नियुक्ति हेतु स्थापित हुआ था तथा अप्राथी संस्थान में आकस्मिक श्रमिकों की नियुक्ति हेतु स्थापित श्रम नियोजन विभाग से प्राप्त सूची के अनुसार अर्थात् "कैज्युअल सेबर पूल" में से प्राथी की नियुक्ति की गई थी । आकस्मिक नियोजक के मामलों में वरिष्ठता सूची जारी करना व धारा 25-एफ, जी व एन अधिनियम आदि की पालना कतई आवश्यक होना नहीं बताया अतः प्राथी का क्लेम खारिज होने योग्य बताया । अपने तर्कों के समर्थन में विद्वान प्रतिनिधि ने दृष्टान्त (1) 2005 एल. एल. आर. (एस. सी.) एम. पी. इलेक्ट्रिसिटी बोर्ड बनाम हरीराम व अन्य तथा (2) (2005) 8 एस. सी. सी. 750 सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धायबाई अमरसिन पेश किये ।

9. मैंने बहस पर गौर किया । जो निर्णय बिन्दु प्रकरण में बताये गये हैं, उनके संबंध में क्रमशः मेरा विनिश्चय इस तरह से है :-

निर्णय बिन्दु सं. 1:

10. प्रकरण में प्राथी श्रमिक ने अप्राथी के यहां जो कार्य किया उसके संबंध में कार्य संबंधी आदेश पेश हुए हैं जिनके अनुसार प्राथी ने धिन्न-2 वर्षों में कार्य किया जो अवधि किसी माह में 15 दिन, किसी माह में 14 दिन, व किसी माह में 10 दिन आदि रही है । प्राथी ने नियुक्ति तिथि से सेवा मुक्ति की दिनांक तक निरन्तर कार्य किया हो, ऐसा प्रकरण में नहीं पाया गया है। सेवा मुक्ति से पिछले एक वर्ष में लगातार 240 दिन कार्य किया हो, ऐसी भी कोई

साक्ष्य पत्रावली पर नहीं है। स्टेटमेंट ऑफ क्लेम तथा प्रार्थी का जो साक्ष्य पत्र पेश हुआ उसमें भी प्रार्थी का यह कथन नहीं है कि उसने सेवा समाप्ति के एक वर्ष पूर्व की अवधि में 240 दिन लगातार कार्य किया हो। प्रार्थी की ओर से जो दृष्टान्त पेश हुए उनमें से अधिकतर मामलों में श्रमिक की सेवा मुक्ति से पूर्व एक वर्ष की अवधि में 240 दिन लगातार कार्य करने के तथ्य सिद्ध पाये गये हैं किन्तु हस्तगत प्रकरण में ऐसा नहीं पाया गया है। प्रार्थी की नियुक्ति दैनिक चेतन भोगी कर्मचारी के रूप में रही है। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम धाय्याइ अमरसिन के चरण सं. 18 में वर्णित अनुसार माननीय सर्वोच्च न्यायालय ने माना कि कर्मकार के लिए यह बताया जाना आवश्यक है कि उसने उसकी सेवा समाप्ति से पहले वर्ष में 240 दिन लगातार कार्य किया हो, जो इस प्रकरण में नहीं पाया गया है। अतः यह निर्णय बिन्दु प्रार्थी की ओर से सिद्ध होना नहीं पाया गया है।

निर्णय बिन्दु सं. 2

11. इस निर्णय बिन्दु में यह देखना है कि क्या अप्रार्थी ने प्रार्थी की सेवा समाप्ति को जब धारा 25-एच, जो व.प्र. अधिनियम तथा औद्योगिक विवाद (कन्द्रीय) नियम 1957 (जो कि निर्णय में अपेक्षा मात्र नियम कहलायेगा) के नियम 77-78 का उल्लंघन करने हुए, की गई है। धारा 25-एच अधिनियम के लिए यह आवश्यक है कि किसी कर्मकार की सेवा समाप्ति से पिछले वर्ष याद उसकी सेवा लगातार 240 दिन या उससे अधिक है जब धारा 25-एच अधिनियम की पालना किया जाना आवश्यक है किन्तु हस्तगत प्रकरण में प्रार्थी द्वारा लगातार 240 दिन की सेवा होना नहीं पाया गया है। धारा 25-जो अधिनियम में छंटनी की प्रक्रिया संबंधी प्रावधान है जिसके अनुसार यदि ऐसा कर्मकार जो किसी विशेष श्रेणी का हो, तो नियोजक के लिए आवश्यक है कि सबसे नीचे वाले कर्मकार को छंटनी पहले करें अर्थात् नियोजक द्वारा नियोजन में यह श्रमिकों की वरिष्ठता सूची रखे एवं उक्त वरिष्ठता सूची में जो सबसे नीचे है उनकी सेवा सबसे पहले समाप्त करें। हस्तगत प्रकरण में एक सूची प्रदर्शित है। पेश हुई है। इस सूची में प्रार्थी का नाम नहीं है अतः इस सूची से यह अप्रतिपादित नहीं किया जा सकता कि प्रार्थी से नीचे वाले श्रमिकों का सेवा मुक्त नहीं कर प्रार्थी की सेवा मुक्त कर दिया गया हो। इसके अतिरिक्त प्रार्थी दैनिक चेतन भोगी कर्मचारी के रूप में नियुक्त था तथा उसकी नियुक्ति 15-15 दिन के लिए की गई थी जो विशेष कार्य एवं निश्चित अवधि के लिए थी। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धाय्याइ अमरसिन में माननीय उच्चतम न्यायालय ने प्रतिपादित किया है कि जहाँ दैनिक चेतन भोगी/आकस्मिक कर्मचारी नियुक्त किये जाते हैं उन मामलों में नियोजक से यह अपेक्षा नहीं की जाती कि वे ऐसे कर्मचारियों की वरिष्ठता सूची बनावें। प्रार्थी के जो कथन हुए हैं देखने से स्पष्ट है कि प्रार्थी के कथनों में यही भाव है कि उसने वरिष्ठता की सजाय समाप्त नहीं कर उसकी सेवा समाप्त की गई है। इसके विपरीत अप्रार्थी की ओर से श्री जगदीश लाल का साक्ष्य पत्र पेश हुआ है जिसमें श्रमिक के संबंध में जारी किये गए आदेश पेश किये हैं तथा उनके कथनों में आया है कि उन्होंने किसी भी वरिष्ठता सूची नहीं बनाया है तथा यह भी

बताया है कि प्रार्थी श्रमिक को एक निश्चित अवधि के लिए लगाया गया था एवं उक्त अवधि समाप्त होने पर उसकी सेवा समाप्त हो गई थी। इस समस्त विवेचन से स्पष्ट निष्कर्ष है कि धारा 25-जो अधिनियम का उल्लंघन भी हस्तगत प्रकरण में नहीं पाया गया है तथा आकस्मिक श्रमिकों के रूप में जैसा कि ऊपर विवेचित अनुसार माननीय उच्चतम न्यायालय के दृष्टान्त को देखने से आकस्मिक तौर पर लगाये गये श्रमिकों की वरिष्ठता सूची रखना भी नियोजक के लिए आवश्यक नहीं है। इस संबंध में प्रार्थी की ओर से जो दृष्टान्त पेश हुए उनका मैंने अध्ययन किया। इन सभी दृष्टान्तों में प्रार्थी का 240 दिन लगातार कार्य करने का तथ्य सिद्ध पाया गया था। हस्तगत प्रकरण का रैफरेंस भी धारा 25-एच अधिनियम के उल्लंघन से ही संबंधित है एवं न ही प्रार्थी ने अपनी सेवा समाप्ति के एक वर्ष पूर्व लगातार 240 दिन कार्य किया, बिन्दु सिद्ध किया है अतः पेश किये गये दृष्टान्त प्रार्थी की कोई मदद नहीं करते।

12. निर्देश जो प्रेषित हुआ तमकी भाषा के अनुसार क्या नियोजक ने प्रार्थी को पुनः नियोजन देने का अवसर दिये बिना उससे कनिष्ठ व्यक्तियों को नियोजन में लिया, इस संबंध में जैसा कि ऊपर विवेचित हुआ है, एक सूची प्रदर्शित है। पेश हुई जिसमें प्रार्थी का नाम नहीं है तथा यह सूची वरिष्ठता सूची हो, ऐसा भी नहीं पाया गया है। आकस्मिक श्रमिकों के संबंध में वरिष्ठता सूची का संधारण किया जाना भी नियोजक से अपेक्षित नहीं माना गया है। प्रार्थी ने अपने कथनों में स्वयं से कनिष्ठ सर्वोच्च पदधारी, कैलाश, रामेश्वर लाल सेना, विनोद कुमार शर्मा आदि के नाम बताये किन्तु रामेश्वर लाल व विनोद कुमार शर्मा के नियुक्ति आदेश ही पेश हुए हैं जिनको देखने से उन्हें मजदूर प्रशिक्षु के रूप में नियोजन हो गई है तथा यह नियुक्ति समझौता दिनांक 2-8-95 के अनुसार देना भी पाया गया है। जबकि प्रार्थी आकस्मिक श्रमिक के रूप में नियुक्त था। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धाय्याइ अमरसिन (ऊपर वर्णित) के अनुसार आकस्मिक श्रमिकों के संबंध में वरिष्ठता सूची की अपेक्षा नियोजक से नहीं की जा सकती तथा ऐसी किये वरिष्ठता सूची के अभाव में धारा 25 एच का उल्लंघन होना भी नहीं माना गया है। नोट 'एच' के अनुसार जहाँ नियोजक की ओर से वरिष्ठता सूची पेश नहीं की गई हो, ऐसे मामले में प्रतिकूल अनुधारण नहीं हो जा सकती है जब ऐसी वरिष्ठता सूची अस्तित्व में थी। ऐसा श्रमिक द्वारा सिद्ध कर दिया जाये। हस्तगत प्रकरण में प्रार्थी की ओर से ऐसा सिद्ध नहीं हो पाया है। अतः प्रकरण में धारा 25 एच अधिनियम का उल्लंघन होना भी प्रार्थी श्रमिक की ओर से सिद्ध नहीं हो पाया है।

13. दृष्टान्त जो प्रार्थी की ओर से ऊपर वर्णित अनुसार इस संबंध में पेश हुए वे तथ्यों की पूर्णता व उनमें प्रतिपादित सिद्धान्त को देखते हुए हस्तगत प्रकरण में लागू नहीं होने हैं। यद्यपि दृष्टान्त आर. एम. येल्लाद्री विरुद्ध अधिशासी अधिकाय में 240 दिन कार्य किया, इस तथ्य को सिद्ध करने के भाग के संबंध में प्रतिपादित किया गया है। दृष्टान्त राजस्थान राज्य विरुद्ध श्री भिंड म लगातार नियोजन किस तरह से सिद्ध होगा, संबंधी बताया गया है। इसी तरह से दृष्टान्त

म्यूनीसिपल कार्पोरेशन कोटा विरुद्ध राम चन्द्र श्रुंगी के मामले में भी प्रतिपादित किया गया है कि पिछले एक वर्ष की अवधि में श्रमिक ने 240 दिन कार्य किया, संबंधी प्रतिपादित किया गया है। प्रकरण में श्रम न्यायालय द्वारा श्रमिक का 240 दिन कार्य किया जाना माना गया था। हस्तगत प्रकरण के तथ्य इस तरह से भिन्न पाये जाते हैं। दृष्टान्त राजस्थान राज्य विरुद्ध छुट्टन लाल में भी अधिनियम की धारा 25-एफ, जी व एच का उल्लंघन माना गया था जबकि हस्तगत प्रकरण में ये तथ्य श्रमिक की ओर से सिद्ध नहीं हुए हैं। दृष्टान्त समिष्टा दुबे विरुद्ध सिटी बोर्ड इटावा के नोट 'बी' की ओर ध्यान दिलाया गया जिसके अनुसार "पहले व्यक्ति आया वह बाद में जायेगा" संबंधी विवेचना की गई है एवं यह भी प्रतिपादित किया गया है कि दैनिक वेतन भोगी मामले में भी ये नियम लागू होंगे किन्तु इस निर्णय बिन्दु में वर्णित अनुसार प्रार्थी का स्थान दैनिक वेतन भोगी की सूची में कहाँ था, ऐसा प्रार्थी की ओर से सिद्ध नहीं हुआ है। दृष्टान्त कृष्ण बहादुर विरुद्ध पूर्णा धिवेटर में भी माननीय उच्चतम न्यायालय ने धारा 25-एफ(बी) अधिनियम व नियम 77-ए का उल्लंघन माना लेकिन हस्तगत प्रकरण में प्रार्थी की सेवा 240 दिन हुई हो, सिद्ध नहीं हुआ है। दृष्टान्त रेलवे कैन्यूअल लेबर यूनियन विरुद्ध नार्दन रेलवे के तथ्य भी हस्तगत प्रकरण के तथ्यों से भिन्न हैं। इस दृष्टान्त में श्रमिक द्वारा धारा 25-जी का उल्लंघन होना माना गया था किन्तु हस्तगत प्रकरण में श्रमिक की ओर से ऐसा सिद्ध नहीं हुआ है। दृष्टान्त भागवद जैन विरुद्ध राजस्थान पाठ्य पुस्तक मण्डल में भी नियम 77 व 78 का उल्लंघन माना गया किन्तु हस्तगत प्रकरण में ऐसा उल्लंघन किस तरह से हुआ, सिद्ध नहीं हुआ है। इसी तरह से अन्य दृष्टान्त एस.पी. शर्मा विरुद्ध राजस्थान टैक्सट बुक बोर्ड, बयपुर फ़टवार प्रशिक्षण केंद्र डींग विरुद्ध कैलाश चन्द्र व अन्य अरावली क्षेत्रीय ग्रामीण बैंक सवाई माधोपुर विरुद्ध पीठासीन अधिकारी सी.आई.टी. निदेशक दूरदर्शन केंद्र विरुद्ध न्यायाधीश, सी.आई.टी. व अन्य एवं कन्हैयालाल शर्मा विरुद्ध राजस्थान राज्य के मामलों में श्रमिक की ओर से धारा 25-एफ जी व एच का उल्लंघन होना सिद्ध हुआ था जो हस्तगत प्रकरण में सिद्ध नहीं हुआ है। दृष्टान्त गुजरात स्टेट मशीन टूल्स विरुद्ध दीपक जे. देसाई का मामला धारा 25-एच से संबंधित था। इसी तरह से दृष्टान्त पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व गैपन इण्डिया लि. विरुद्ध निरंजनदास तथा ओम प्रकाश विरुद्ध राजस्थान राज्य के मामले भी 25-एच से ही संबंधित थे। इसके अतिरिक्त हस्तगत प्रकरण में रैफरेंस की जो भाषा है उसके अनुसार नियोजक ने प्रार्थी को पुनः नियोजन का अवसर दिये बिना उससे कनिष्ठ व्यक्तियों को नियोजन में लिया, ऐसा सिद्ध नहीं हुआ है। अतः जो दृष्टान्त इस संबंध में पेश हुए हैं वे प्रार्थी की कोई मदद नहीं करते।

निर्णय बिन्दु सं. 3:

14. इस बिन्दु को सिद्ध करने का भार अप्रार्थी नियोजक पर था। प्रार्थी के संबंध में जारी कार्यालय आदेश प्रदर्श एम-1 से एम-14 को देखने से प्रार्थी के संबंध में कार्य आदेश 15-15 दिन के लिए तथा प्रदर्श एम-5 के द्वारा 7 दिन के लिए दिये गये थे। इस तरह से कार्य आदेश एक निश्चित अवधि तक के लिए थे तथा अगले कार्य आदेश पहले कार्य के समाप्त होते ही दूसरे दिन दे दिये गये हों, ऐसा भी नहीं

पाया गया है। प्रदर्श एम-1 से एम-4 को देखने से प्रार्थी को भिन्न-2 विभागों में एवं भिन्न-2 कार्य हेतु तथा आकस्मिक तौर पर लिया गया है। इस तरह से प्रार्थी की नियुक्ति अर्थात् उसके संबंध में कार्यालय आदेश एक निश्चित अवधि के लिए थे, यह बखूबी पाया गया है। अधिनियम की धारा 2(00)(बीबी) के अनुसार श्रमिक जिनकी सेवा समाप्ति कार्य के संबंध में जारी सविदा की अवधि समाप्त होने के बाद स्वतः ही समाप्त हो जाना पाया गया है। हस्तगत प्रकरण में जो कार्य आदेश (नियुक्ति आदेश) दिये गये हैं वे स्वतंत्र रूप से दिये गये हैं व कि पूर्व के कार्यालय आदेश को नवीनीकरण करते हुए दिये गये हैं। दृष्टान्त 2007 1 एल.एल.जे. 696 (एस.सी.) एम.डी. कर्नाटक इण्डलूम डेवेलपमेंट कार्पोरेशन विरुद्ध महादेव लक्ष्मण रावल तथा दृष्टान्त 2007 1 एल. एल.जे. पेज 717 (एस.सी.) गंगाधर पिलई विरुद्ध सीमेन्स लिमिटेड में इसी संबंध में प्रतिपादित करते हुए माना कि जहां ऐसे व्यक्ति जिनको आकस्मिक श्रमिक के रूप में कई वर्षों तक किन्तु कुछ-कुछ समय के बाद (इंटरमीटेंटली) कार्य पर लिया गया उसकी सेवा समाप्ति को धारा 2(00) अधिनियम में वर्णित अनुसार छंटी नहीं कहा जा सकता तथा धारा 2(बीबी) अधिनियम के अनुसार भी ऐसी सेवा समाप्ति छंटी की परिभाषा में नहीं आती। इस संबंध में जो दृष्टान्त प्रार्थी की ओर से पेश हुए यथा (1) एस.एम. नीलरजकर व अन्य विरुद्ध डिस्ट्रिक्ट मैनेजर टेलीकॉम, (2) मुख्य सचिव हरियाणा व अन्य विरुद्ध चेताराम, (3) भीखराम विरुद्ध पीठासीन अधिकारी औद्योगिक न्यायाधिकरण रोहतक, (4) चैयरमैन-कम-एम.डी. उड्डोसा पथ परिवहन निगम विरुद्ध रमेश चन्द्र में प्रतिपादित सिद्धान्त का अध्ययन किया लेकिन हस्तगत प्रकरण में जैसा कि इस निर्णय बिन्दु में विवेचित हुआ, श्रमिक को आकस्मिक तौर पर व करीब करीब 15-15 दिन के लिए एवं कुछ आदेश से 7 दिन के लिए ही नियुक्तियां दी गई हैं तथा इस संबंध में ऊपर वर्णित माननीय उच्चतम न्यायालय के नवीनतम निर्णय को देखते हुए जो दृष्टान्त प्रार्थी की ओर से पेश हुए, वे प्रार्थी की कोई मदद नहीं करते। अतः यह निर्णय बिन्दु अप्रार्थी नियोजक की ओर से सिद्ध होना पाया गया है।

निर्णय बिन्दु सं. 4:

14. यह निर्णय बिन्दु अनुतोष से संबंधित है और उपरोक्त विवेचन के आधार पर प्रार्थी किसी अनुतोष का अधिकारी नहीं है अतः निर्देश का उत्तर निम्न प्रकार दिया जाता है:

“खेतड़ी कॉपर कॉम्प्लेक्स हिन्दुस्तान कॉपर लि. कं प्रबन्धन द्वारा श्री सुरेश चंद को दिनांक 3-5-1983 से 30-8-92 तक आंतरायिक रूप से आकस्मिक श्रमिक के रूप में नियोजित करने के पश्चात् दिनांक 30-8-92 से सेवा मुक्त करना व उससे कनिष्ठ श्रमिकों को नियोजित करने से पहले प्रार्थी को अवसर नहीं देने का कार्यवाही उचित एवं वैध है। प्रार्थी कांड राहत पाने का अधिकारी नहीं है।”

15. अवाई आज दिनांक 30-7-2008 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केंद्र सरकार को प्रकाशनार्थ निगमांतसांग भेजा जावे।

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचना में, केन्द्रीय सरकार हिन्दुस्तान कॉपर लिमिटेड, के प्रबंधन के संलग्न नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर को पंचाट (संदर्भ संख्या सीआईटी-57/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

[सं. एल-43012/1/1996-आई आर (एम)।

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CIT-57/1996) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur know as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Hindustan Copper Ltd., and their workman, which was received by the Central Government on 22-08-2008.

[No. L-43012/1/1996-IR(M)]

KAMAL BAKHURU, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 57/96

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश

क्र. सं. एल-43012/1/96-आई.आर. (विविध) दि. 27-11-96

श्री भान सिंह द्वारा श्री ऋषभ चंद जैन, 80, बजरंग विहार, गोपालपुरा रेलवे फाटक के पास, टीक रोड, जयपुर।

... प्रार्थी

बनाम

एजीक्यूटिव डायरेक्टर, हिन्दुस्तान कॉपर लि. खेतड़ी कॉपर काम्प्लेक्स, खेतड़ी नगर, झुंझनू।

... अप्रार्थी

उपस्थित

पीठासीन अधिकारी: श्री गौतम प्रकाश शर्मा, आर.एच.जे.एस.

प्रार्थी को ओर से : श्री आर. सी. जैन

अप्रार्थी को ओर से : श्री मनोज कुमार शर्मा

दिनांक : 30-7-2008

अवार्ड

1. केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनियमित हेतु निर्देशित किया है :

"Whether the action of the management of Khetri Copper Complex, Hindustan Copper Ltd., Khetri Nagar, Dist Jhunjhuna is justified, in terminating the services of Shri Bhim Singh w.e.f. 30-8-92, (A.N.) after employing him as Casual workman w.e.f. 17-2-83 to 30-8-92, intermittently without giving any opportunity of employment before employing workmen junior to him, in violation of Section 25-F of the I.D. Act is justified? If not, to what relief the workman is entitled and from what date?"

2. प्रार्थी श्रमिक को ओर से विवाद की पुष्टि में अपना स्टेटमेंट ऑफ क्लेम पेश किया गया जिसके सौक्ष्म तथ्य इस प्रकार हैं कि प्रार्थी, अप्रार्थी संस्थान में दिनांक 17-2-83 से आकस्मिक श्रमिक के रूप में कार्य कर रहा था। नियुक्ति विधि से प्रार्थी लगातार कार्य कर रहा था किन्तु अप्रार्थी के अधिकारियों ने दिनांक 30-8-92 से प्रार्थी को कार्य देना बंद कर दिया अर्थात् सेवा मुक्त कर दिया। उक्त सेवा मुक्ति को प्रार्थी ने इन आधारों पर अनुचित व अवैध बताया कि सेवा मुक्ति से पूर्व उसे कोई नॉटिस या नॉटिस वेंचन तथा मुआवजे का भुगतान नहीं किया गया जो औद्योगिक विवाद अधिनियम 1947 (जो निर्णय में आगे मात्र अधिनियम लिखा जाएगा) की धारा 25-एफ को अवहेलना है। सेवा मुक्ति के समय अधिनियम की धारा 25-जी व अधिनियम के नियम 77 के तहत कोई वरिष्ठता सूची भी जारी नहीं की। प्रार्थी को सेवा मुक्त करने के पश्चात जो कार्य प्रार्थी करता था उस कार्य के लिए नये श्रमिकों की भर्ती की है जो धारा 25-एच का उल्लंघन है तथा अधिनियम की धारा 25-एन के तहत प्रार्थी को सेवा मुक्त करने से पूर्व सक्षम सरकार की अनुमति भी नहीं ली। अतः सेवामुक्ति आदेश अनुचित व अवैध बताते हुए प्रार्थना की कि सेवा मुक्ति आदेश दिनांक 30-8-82 को अनुचित व अवैध घोषित किया जावे, प्रार्थी को सेवान्तर मानते हुए समस्त पिछला वेतन व अन्य लाभ दिलवाये जाने का अवार्ड पारित किया जावे।

3. अप्रार्थी को ओर से क्लेम का जवाब पेश कर प्रार्थक आपत्तियां उठाई गई हैं कि प्रार्थी को आकस्मिक श्रमिक के रूप में अप्रार्थी संस्थान में विभिन्न अवसरों में नियोजित किया गया जिससे नियोजन का कोई कानूनी अधिकार प्रार्थी को प्राप्त नहीं होता। आकस्मिक कार्यों के लिए आकस्मिक श्रमिकों को रखने की व्यवस्था संस्थान में रजिस्टर्ड यूनियन की सहमति से प्रचलित है, ऐसे में केन्द्र सरकार द्वारा भेजा गया विवाद औद्योगिक विवाद नहीं है और अधिकरण के क्षेत्राधिकार में नहीं आता है। जवाब में आगे बताया कि प्रार्थी को आकस्मिक कार्यों हेतु समय-समय पर सौविदा स्वरूप रखा जाता था और कार्य सम्पूर्ण होने पर उसका नियोजन स्वतः ही समाप्त हो जाता था, अतः प्रार्थी की सेवामुक्ति छंटनी की परिभाषा में नहीं आती बल्कि अधिनियम की धारा 2(100)(बीबी) के प्रावधानों के अन्तर्गत आती है जो कार्य प्रारंभ के साथ शुरू होकर कार्य की समाप्ति के साथ ही समाप्त हो जाती है। इन आधारों पर क्लेम निरस्त होने योग्य बताया।

4. गुणावगुण पर अप्रार्थी का जवाब है कि प्रार्थी को आकस्मिक कार्यों हेतु सविदा अनुसार समय-समय पर रखा गया। दिनांक 30-8-92

तक की अवधि में प्राथी ने आकस्मिक कार्य पर स्व-सहमति से नियोजन प्राप्त किया जो कार्य समाप्ति के साथ स्वतः ही प्राथी की पूर्ण जानकारी के अनुसार समाप्त हो गया, अतः प्राथी का यह कथन कि बिना कारण उसे सेवा से पृथक् कर दिया, गलत है। प्राथी ने अंतिम बार दिनांक 29-8-92 तक सौविदा एवं व्यवस्था के अनुसार कार्य किया। आकस्मिक श्रमिक पर अधिनियम के प्रावधान नहीं होते अतः धारा 25-एफ, जी, एच, व एन अधिनियम के प्रावधानों का कोई उल्लंघन नहीं हुआ है न ही किसी श्रम कानून का उल्लंघन किया गया है। अतः प्राथी का क्लेम खारिज होने योग्य बताया।

5. साक्ष्य में प्राथी भानसिंह स्वयं का शपथ पत्र पेश हुआ है जिससे अप्राथी प्रतिनिधि ने जिरह की है। अप्राथी की ओर से श्री जगदीश लाल व भगीरथ सिंह के शपथ पत्र पेश हुए हैं जिससे प्राथी प्रतिनिधि ने जिरह की है। कुछ दस्तावेजात भी प्रदर्श कराये गये हैं जिनका विवेचन यथा स्थान किया जायेगा।

6. मैंने दोनों पक्षों की बहस सुनी, पत्रावली का अवलोकन किया। प्रकरण में मेरे समक्ष निम्न बिन्दु तय करने हेतु हैं :

1. क्या प्राथी श्रमिक ने विपक्षी संस्थान में दिनांक 17-2-83 से आकस्मिक श्रमिक के रूप में उसकी सेवा मुक्ति की दिनांक 30-8-92 तक निरन्तर कार्य किया?
2. क्या प्राथी की सेवा समाप्ति अधिनियम की धारा 25-एफ, जी, एच, व औद्योगिक विवाद केंद्रीय नियम 1957 के नियम 77-78 का उल्लंघन कर की गई?
3. क्या प्राथी की सेवा मुक्ति छंटनी की परिभाषा में नहीं आती और धारा 2(00)(बीबी) अधिनियम के अनुसार प्राथी का नियोजन आरंभ व समाप्त होना था?
4. अनुतोष?

7. प्राथी श्रमिक की ओर से प्रतिनिधि ने अपनी बहस में बताया कि प्राथी की नियुक्ति आकस्मिक श्रमिक के रूप में दिनांक 17-2-83 से हुई, इस तथ्य को स्पष्ट रूप से इन्कार नहीं किया गया है। अतः यह सिद्ध है कि दिनांक 17-2-83 से अप्राथी संस्थान में आकस्मिक श्रमिक के रूप में प्राथी नियुक्त था। उनकी बहस है कि इस तिथि से उसको सेवा समाप्ति की तिथि 30-8-92 तक प्राथी ने विपक्षी संस्थान में निरन्तर व बराबर कार्य किया एवं उसे सेवा मुक्त किये जाने से पूर्व उसे न तो कोई नोटिस दिया गया न ही नोटिस वेतन का भुगतान किया गया तथा धारा 25-एफ अधिनियम के अनुसार मुआवजे का भुगतान भी नहीं किया गया। अप्राथी संस्थान ने प्राथी की सेवा समाप्ति के समय कोई वरिष्ठता सूची जारी नहीं की तथा प्राथी से कनिष्ठ श्रमिकों जिनकी सूची प्रदर्श डब्ल्यू-1 पेश की है, को नियमित वेतन श्रृंखला में दी गई है। प्राथी की सेवा समाप्ति के समय विपक्षी संस्थान में हजारों श्रमिक कार्यरत थे फिर भी अप्राथी संस्थान की ओर से प्राथी की सेवा समाप्त करने से पूर्व सक्षम सरकार की अनुमति नहीं ली। उनकी आगे बहस है कि एक आवेदन प्राथी की ओर से दस्तावेज तलब कराने का पेश किया जिस पर आदेश भी दिये, अप्राथी द्वारा कुछ दस्तावेज पेश किये एवं कुछ पेश नहीं किये जबकि दैनिक वेतन

भोगी के मामले में रिकार्ड पेश करने का दायित्व संस्थान का होता है। अतः अप्राथी संस्थान के विरुद्ध प्रतिकूल अवधारणा ली जाकर प्राथी के मामले को सिद्ध माना जाये। प्राथी का आदेश निश्चित अवधि का हो, सिद्ध नहीं हुआ है तथा किसी सौविदा के तहत हो, ऐसी सौविदा भी पेश नहीं हुई है। इस तरह से उनकी बहस है कि प्राथी की सेवा समाप्ति का प्रसंगत आदेश अवैध व अनुचित है एवं अपास्त होने योग्य है। प्रतिनिधि ने अपने तर्कों के समर्थन में निम्न न्याय दृष्टान्त पेश किये :

1. 2003(97)एफ.एल.आर. 608 (एस.सी.) एस.एम. नीलाजकर विरुद्ध टेलीकॉम डिस्ट्रिक्ट मैनेजर कर्नाटक।
2. 2006 एस.सी.सी. (एल. एण्ड एस.) पेज 574 मुख्य सचिव, हरियाणा राज्य व अन्य विरुद्ध चेताराम।
3. 1996(3) एल.एल.जे. पेज 1126 (पंजाब व हरियाणा) भीखुराम विरुद्ध पीठासीन अधिकारी औद्योगिक न्यायाधिकरण रोहतक।
4. 1994 II एल.एल.जे. 1127 (उड़ीसा) चेयरमैन एवं एम.डी. उड़ीसा पथ परिवहन निगम विरुद्ध रमेश चन्द भौड़ा।
5. 2003(4) एल.एल.एन. 954, राजस्थान राज्य विरुद्ध शेरसिंह व अन्य।
6. 2000(3) आर.एल.आर.-447 (राजस्थान) म्यूनीसिपल कार्पोरेशन कोटा विरुद्ध रामचन्द्र श्रृंगी।
7. 1997 डब्ल्यू.एल.सी. (यू.सी.) 114 (राज.) राजस्थान राज्य विरुद्ध छुट्टन लाल व अन्य।
8. (1999) 3 एस.सी.सी. 14 सभिष्ठा दुबे विरुद्ध सिटी बोर्ड इटावा।
9. 2004 (3) एल.एल.जे.-555 (एस.सी.) कृष्ण बहादुर विरुद्ध पूरणा थियेटर व अन्य।
10. 1991(1) एल.एल.आर. पेज 577 (राजस्थान) रेलवे लेबर यूनियन विरुद्ध नार्दन रेलवे।
11. डब्ल्यू.एल.आर. 1995 (राज.) 71 भगचंद जैन विरुद्ध राजस्थान राज्य पाठ्य पुस्तक मण्डल।
12. 1991(2) आर.एल.आर. पेज 691 (राजस्थान) सूर्य प्रकाश शर्मा विरुद्ध राजस्थान टैक्सट बुक बोर्ड।
13. 1997 डब्ल्यू.एल.सी. (यू.सी.) पेज 104 (राजस्थान) पटवार प्रशिक्षण केंद्र, डींग विरुद्ध कैलाश चन्द्र व अन्य।
14. 2002(1) डब्ल्यू.एल.सी. पेज 296 (राजस्थान) अरावली क्षेत्रीय ग्रामीण बैंक सवाई माधोपुर विरुद्ध पीठासीन अधिकारी सी.जी.आई.टी. जयपुर व अन्य।
15. 2005 डब्ल्यू.एल.सी. (यू.सी.) (राज.) पेज 737 निदेशक, दूरदर्शन केंद्र विरुद्ध जज, सी.आई.टी. व अन्य।
16. 1992(3) डब्ल्यू.एल.सी. (राज.) 56 कन्हैया लाल शर्मा विरुद्ध राजस्थान राज्य।

17. 1994 III एल.एल.जे. 848 (गुजरात) गुजरात राज्य मशीन टूल्स कार्पोरेशन लि. विरुद्ध दीपक जे. देसाई।
18. 2005(8) आर.डी.डी. 3280 (राजस्थान) पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व अन्य।
19. ए.आई.आर. 1979 (एस.सी.) 75 मैसर्स हिन्दुस्तान टिन वर्क्स लि. विरुद्ध श्रमिकगण।
20. 1984(48) एफ.एल.आर. 310 (एस.सी.) गैमन इण्डिया लि. विरुद्ध निरंजनदास।
21. 1997 III एल.एल.जे. 439 (राजस्थान) ओम प्रकाश गैर विरुद्ध राजस्थान राज्य।
22. 2005 III सी.एल.आर. 1078 (एस.सी.) आर.एम. गेलाटी विरुद्ध अधिशासी अभियन्ता।
23. 2001(1) एल.एल.एन. (एस.सी.) 852 विक्रमादित्य वाण्डे विरुद्ध औद्योगिक न्यायाधिकरण, लखनऊ।
24. 2000(III) एल.एल.जे. 1678 (सफ़ी) (एस.सी.) पी.जी. आई. ऑफ़ मेडिकल एजुकेशन विरुद्ध बी. के. शर्मा।
25. 2005 सी.आई.सी. 2279 (एस.सी.) बैंक ऑफ़ बड़ौदा विरुद्ध घेमर भाई हरजी भाई रावारी।
26. आर.एल.आर. 1999(1) (राजस्थान) 579 अधिशासी अभियन्ता सी.ए.डी. कोटा विरुद्ध सत्यनारायण व अन्य।
27. 1993(3) एल.एल.जे. पेज 730 (पंजाब व हरियाणा) भूपण लाल विरुद्ध पीठासीन अधिकारी श्रम न्यायालय, पटियाला।
28. 1999(4) एस.एल.आर. (डी.बी. पी. एण्ड एच.) 476 हरियाणा राज्य विरुद्ध पीठासीन अधिकारी, श्रम न्यायालय प्रथम फरीदाबाद।
29. 2005 आर.डी.डी. 1015 (राजस्थान) मैनेजर, मैसर्स मितल पैन्थ्रैक्चरिंग कम्पनी विरुद्ध चौथा राम।

8. अप्राथी प्रतिनिधि ने अपनी बहस में बताया कि प्राथी स्वयं ने अपने को आकस्मिक श्रमिक होना स्वीकार किया है। इसके अतिरिक्त अप्राथी की ओर से एंगेजमेंट आदेश भी पेश हुआ है अतः कार्य समाप्त होते ही उसकी नियुक्ति समाप्त होना माना जाये। प्राथी की नियुक्ति एंगेजमेंट आर्डर के अनुसार हुई, इस तथ्य को प्राथी ने जिरह में भी स्वीकार किया है। उनकी आगे बहस है कि प्राथी का नियोजन "कान्ट्रैक्ट फॉर सर्विस" था न कि "कान्ट्रैक्ट ऑफ़ सर्विस"। उनकी आगे बहस है कि वरिष्ठता सूची प्रदर्श डब्ल्यू-1 को प्राथी ने साबित नहीं किया है। इस तरह से प्राथी-जो कि आकस्मिक श्रमिक के रूप में नियुक्त हुआ था तथा अप्राथी संस्थान में आकस्मिक श्रमिकों की नियुक्ति हेतु स्थापित श्रम नियोजन विभाग से प्राप्त सूची के अनुसार अर्थात् "कैज्युअल लेबर पूल" में से प्राथी की नियुक्ति की गई थी। आकस्मिक नियोजक के मामलों में वरिष्ठता सूची जारी करना व धारा 25-एफ, जी व एन अधिनियम आदि की पालना कतई आवश्यक होना नहीं बताया अतः प्राथी का क्लेम खारिज होने योग्य बताया। अपने तर्कों के समर्थन में विद्वान प्रतिनिधि ने दृष्टान्त (1)

2005 एल.एल.आर. (एस.सी.) एन.पी. इलेक्ट्रिसिटी बोर्ड बनाम हरीशम व अन्य तथा (2) (2005) 8 एस.पी.सी. 750 सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धाबाई अमरसिन पेश किये।

9. मैने बहस पर गौर किया: जो निर्णय बिन्दु प्रकरण में बनाये गये हैं, उनके संबंध में क्रमशः भंग विनिरचय इस तरह से हैं:

निर्णय बिन्दु सं. 1 :

10. प्रकरण में प्राथी श्रमिक ने अप्राथी के यहां जो कार्य किया उसके संबंध में कार्य संबंधी आदेश पेश हुए हैं जिसके अनुसार प्राथी ने धित-2 वर्षों में कार्य किया जो अवधि किसी माह में 15 दिन, किसी माह में 14 दिन व किसी माह में 10 दिन आदि रही है। कार्य नियुक्ति तिथि से सेवा मुक्ति की दिनांक तक निरन्तर किया, ऐसा प्रकरण में नहीं पाया गया है। सेवा मुक्ति से पिछले एक वर्ष में लगातार 240 दिन कार्य किया हो, ऐसी भी कोई साक्ष्य पत्रावली पर नहीं है। स्टेटमेंट ऑफ़ क्लेम तथा प्राथी का जो शपथ-पत्र पेश हुआ उसमें भी प्राथी का यह कथन नहीं है कि उसने सेवा समाप्ति के एक वर्ष पूर्व की अवधि में 240 दिन लगातार कार्य किया हो। प्राथी की ओर से जो दृष्टान्त पेश हुए उनमें से अधिकतर मामलों में श्रमिक की सेवा मुक्ति से पूर्व एक वर्ष की अवधि में 240 दिन लगातार कार्य करने के तथ्य सिद्ध पाये गये हैं किन्तु हस्तगत प्रकरण में ऐसा नहीं पाया गया है। प्राथी की नियुक्ति दैनिक वेतन भांति कर्मचारी के रूप में रही है। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम धाबाबाई अमरसिन के चरण सं. 18 में वर्णित अनुसार माननीय सर्वोच्च न्यायालय ने माना कि कर्मकार के लिए यह बताया जाना आवश्यक है कि उसने उसकी सेवा समाप्ति से पहले वर्ष में 240 दिन लगातार कार्य किया हो, जो इस प्रकरण में नहीं पाया गया है। अतः यह निर्णय बिन्दु प्राथी की ओर से सिद्ध होना नहीं पाया गया है।

निर्णय बिन्दु सं. 2 :

11. इस निर्णय बिन्दु में यह देखा है कि क्या अप्राथी ने प्राथी की सेवा समाप्ति की तब धारा 25-एफ, जी व एच अधिनियम तथा औद्योगिक विवाद (केन्द्रीय) नियम 1957 (जो कि निर्णय में आगे मात्र नियम कहलायेगा) के नियम 77-78 का उल्लंघन करते हुए की गई है। धारा 25-एफ अधिनियम के लिए यह आवश्यक है कि किसी कर्मकार की सेवा समाप्ति से पिछले वर्ष यदि उसकी सेवा लगातार 240 दिन या उससे अधिक है तब धारा 25-एफ अधिनियम की पालना किया जाना आवश्यक है किन्तु हस्तगत प्रकरण में प्राथी द्वारा लगातार 240 दिन की सेवा होना नहीं पाया गया है। धारा 25-जी अधिनियम में छंटनी की प्रक्रिया संबंधी प्रावधान है जिसके अनुसार यदि ऐसा कर्मकार जो किसी विशेष श्रेणी का हो, तो नियोजक के लिए आवश्यक है कि सबसे नीचे वाले कर्मकार की छंटनी पहले करे अर्थात् नियोजक द्वारा नियोजन में रहे श्रमिकों की वरिष्ठता सूची रखे एवं उक्त वरिष्ठता सूची में जो सबसे नीचे है उनकी सेवा सबसे पहले समाप्त करे। हस्तगत प्रकरण में एक सूची प्रदर्श डब्ल्यू-1 पेश हुई है। इस सूची में प्राथी का नाम नहीं है अतः इस सूची से यह अभिनिर्धारित नहीं किया जा सकता कि प्राथी से नीचे वाले श्रमिकों को सेवा मुक्त

नहीं कर प्रार्थी को सेवा मुक्त कर दिया गया हो। इसके अतिरिक्त प्रार्थी-दैनिक वेतन भोगी कर्मचारी के रूप में नियुक्त था तथा उसकी नियुक्ति 15-15 दिन के लिए की गई थी जो विशेष कार्य एवं निश्चित अवधि के लिए थी। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धायारबाई अमरसिन में माननीय उच्चतम न्यायालय ने प्रतिपादित किया है कि जहां दैनिक वेतन भोगी/आकस्मिक कर्मचारी नियुक्त किये जाते हैं उन मामलों में नियोजक से यह अपेक्षा नहीं की जाती कि वे ऐसे कर्मचारियों की वरिष्ठता सूची बनावें। प्रार्थी के जो बयान हुए हैं उनके भी मैंने देखा है। प्रार्थी के बयानों में यही आया है कि उससे कनिष्ठ की सेवाएं समाप्त नहीं कर उसकी सेवाएं समाप्त की गई हैं। इसके विपरीत अप्रार्थी की ओर से श्री जगदीश लाल का शपथ-पत्र पेश हुआ है जिन्होंने श्रमिक के संबंध में जारी किये गये कार्य आदेश पेश किये हैं तथा उनके कथनों में आया है कि उन्होंने किसी भी कनिष्ठ को नहीं लगाया है तथा यह भी बताया है कि प्रार्थी श्रमिक को एक निश्चित अवधि के लिए लगाया गया था एवं उक्त अवधि समाप्त होने पर उसकी सेवाएं स्वतः ही समाप्त हो गई थी। इस समस्त विवेचन से मेरा निष्कर्ष है कि धारा 25-जी अधिनियम का उल्लंघन भी हस्तगत प्रकरण में नहीं पाया गया है तथा आकस्मिक श्रमिकों के रूप में जैसा कि ऊपर विवेचित अनुसार माननीय उच्चतम न्यायालय के दृष्टान्त को देखने से आकस्मिक तौर पर समाये गये श्रमिकों की वरिष्ठता सूची रखना भी नियोजक के लिए आवश्यक नहीं है। इस संबंध में प्रार्थी की ओर से जो दृष्टान्त पेश हुए उनका मैंने अध्ययन किया। इन सभी दृष्टान्तों में प्रार्थी का 240 दिन लगातार कार्य करने का तथ्य सिद्ध पाया गया था। हस्तगत प्रकरण का रैफरेंस भी धारा 25-एच अधिनियम के उल्लंघन से ही संबंधित है एवं न हो प्रार्थी ने अपनी सेवा समाप्ति के एक वर्ष पूर्व लगातार 240 दिन कार्य किया, बिन्दु सिद्ध किया है अतः पेश किये गये दृष्टान्त प्रार्थी को कोई मदद नहीं करते।

12. निर्देश जो प्रेषित हुआ उसकी भाषा के अनुसार क्या नियोजक ने प्रार्थी को पुनः नियोजन देने का अवसर दिये बिना उससे कनिष्ठ व्यक्तियों को नियोजन में लिया, इस संबंध में जैसा कि ऊपर विवेचित हुआ है, एक सूची प्रदर्श डब्ल्यू-1 पेश हुई जिसमें प्रार्थी का नाम नहीं है तथा यह सूची वरिष्ठता सूची हो, ऐसा भी नहीं पाया गया है। आकस्मिक श्रमिकों के संबंध में वरिष्ठता सूची का संधारण किया जाना भी नियोजक से अपेक्षित नहीं माना गया है। प्रार्थी ने अपने बयानों में स्वयं से कनिष्ठ सर्वश्री धर्मपाल, कैलाश, रामेश्वर लाल सैनी, विनोद कुमार शर्मा आदि के नाम बताये किन्तु रामेश्वर लाल व विनोद कुमार शर्मा के नियुक्ति आदेश ही पेश हुए हैं जिनको देखने से उन्हें मजदूर प्रशिक्षु के रूप में नियुक्ति दी गई है तथा यह नियुक्ति समझौता दिनांक 2-8-95 के अनुसार देना भी पाया गया है जबकि प्रार्थी आकस्मिक श्रमिक के रूप में नियुक्त था। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धायारबाई अमरसिन (ऊपर वर्णित) के अनुसार आकस्मिक श्रमिकों के संबंध में वरिष्ठता सूची की अपेक्षा नियोजक से नहीं की जा सकती तथा ऐसी किसी वरिष्ठता सूची के अभाव में धारा 25-एच का उल्लंघन होना भी नहीं माना गया है। नोट 'एच' के अनुसार जहां नियोजक की ओर से वरिष्ठता सूची पेश नहीं

की गई हो, ऐसे मामले में प्रतिकूल अवधारणा तभी ली जा सकती है जब ऐसी वरिष्ठता सूची अस्तित्व में थी, ऐसा श्रमिक द्वारा सिद्ध कर दिया जावे। हस्तगत प्रकरण में श्रमिक की ओर से ऐसा सिद्ध नहीं हो पाया है। अतः प्रकरण में धारा 25-एच अधिनियम का उल्लंघन होना भी प्रार्थी श्रमिक की ओर से सिद्ध नहीं हो पाया है। इसके अतिरिक्त माननीय उच्चतम न्यायालय के नवीनतम निर्णय 2006 II एल.एल.जे. पेज 1046 (एस.सो.) एस.बी.बी.जे. विरुद्ध ओम प्रकाश शर्मा में प्रतिपादित अनुसार यदि रैफरेंस धारा 25-एच के उल्लंघन से ही संबंधित हो एवं रैफरेंस में श्रमिक की सेवा समाप्ति का बिन्दु तथा नियम 77 का बिन्दु समाविष्ट नहीं हो तो यदि धारा 25-एच का उल्लंघन नहीं पाया गया है तो सेवा समाप्ति के आदेश को अपास्त नहीं किया जा सकता। इसी दृष्टान्त के पैरा 11 में माननीय उच्चतम न्यायालय ने बखूबी वर्णित किया है कि नियम 77 के प्रावधान आज्ञापक होना मान भी लिया जावे तब भी यदि नियोजक ने संबंधित रजिस्टर का संधारण नहीं किया हो तो मात्र इसी आधार पर श्रमिक पुनः सेवा में आने का अधिकारी नहीं हो जाता। हस्तगत प्रकरण में श्रमिक की सेवा 240 दिन लगातार होने का तथ्य भी सिद्ध नहीं हुआ है।

13. अन्य दृष्टान्त जो प्रार्थी की ओर से ऊपर वर्णित अनुसार इस संबंध में पेश हुए वे तथ्यों की भिन्नता व उनमें प्रतिपादित सिद्धान्त को देखते हुए हस्तगत प्रकरण में लागू नहीं होते हैं। यथा दृष्टान्त आर.एम. चेलादुटी विरुद्ध अधिशासी अधिवक्ता में 240 दिन कार्य किया, इस तथ्य को सिद्ध करने के भार के संबंध में प्रतिपादित किया गया है। दृष्टान्त राजस्थान राज्य विरुद्ध शेर सिंह में लगातार नियोजन किस तरह से सिद्ध होगा, संबंधी बताया गया है। इसी तरह से दृष्टान्त म्पुनीसोपल कार्पोरेशन कोटा विरुद्ध राम चन्द्र श्रृंगी के मामले में भी प्रतिपादित किया गया है कि पिछले एक वर्ष की अवधि में श्रमिक ने 240 दिन कार्य किया, संबंधी प्रतिपादित किया गया है। प्रकरण में श्रम न्यायालय द्वारा श्रमिक का 240 दिन कार्य किया जाना माना गया था। हस्तगत प्रकरण के तथ्य इस तरह से भिन्न पाये जाते हैं। दृष्टान्त राजस्थान राज्य विरुद्ध छुट्टन लाल में भी अधिनियम की धारा 25-एफ, जी व एच का उल्लंघन माना गया था जबकि हस्तगत प्रकरण में ये तथ्य श्रमिक की ओर से सिद्ध नहीं हुए हैं। दृष्टान्त समिष्टा दुबे विरुद्ध सिटी बोर्ड इटावा के नोट 'बी' की ओर ध्यान दिलाया गया जिसके अनुसार पहले व्यक्ति आया वह बाद में जायेगा संबंधी विवेचना की गई है एवं यह भी प्रतिपादित किया गया है कि दैनिक वेतन भोगी मामले में भी ये नियम लागू होंगे किन्तु इस निर्णय बिन्दु में वर्णित अनुसार प्रार्थी का स्थान दैनिक वेतन भोगी की सूची में कहाँ था, ऐसा प्रार्थी की ओर से सिद्ध नहीं हुआ है। दृष्टान्त कृष्ण बहादुर विरुद्ध पूरणा थियेटर में भी माननीय उच्चतम न्यायालय ने धारा 25-एफ(बी) अधिनियम व नियम 77-ए का उल्लंघन माना लेकिन हस्तगत प्रकरण में प्रार्थी की सेवा 240 दिन हुई हो, सिद्ध नहीं हुआ है। दृष्टान्त रेलवे कैम्पुअल लेबर यूनियन विरुद्ध नार्दन रेलवे के तथ्य भी हस्तगत प्रकरण के तथ्यों से भिन्न हैं। इस दृष्टान्त में श्रमिक द्वारा धारा 25-जी का उल्लंघन होना माना गया था किन्तु हस्तगत प्रकरण में श्रमिक की ओर से ऐसा सिद्ध नहीं हुआ है। दृष्टान्त

भागचंद जैन विरुद्ध राजस्थान पादय पुस्तक मण्डल में भी नियम 77 व 78 का उल्लंघन माना गया किन्तु हस्तगत प्रकरण में ऐसा उल्लंघन किस तरह हुआ, सिद्ध नहीं हुआ है। इसी तरह से अन्य दृष्टान्त एस. पी. शर्मा विरुद्ध राजस्थान टैक्सट बुक बोर्ड, जयपुर पत्रवार प्रशिक्षण केंद्र डीग विरुद्ध कैलाश चन्द व अन्य अरावली क्षेत्रीय ग्रामीण बैंक सवाई माधोपुर विरुद्ध पोटासोन अधिकारी सी.आई.टी. निदेशक दूरदर्शन केंद्र विरुद्ध न्यायाधीश. सी.आई.टी. व अन्य एवं कन्हैयालाल शर्मा विरुद्ध राजस्थान राज्य के मामलों में श्रमिक को ओर से धारा 25-एफ, जी व एच उल्लंघन होना सिद्ध हुआ था जो हस्तगत प्रकरण में सिद्ध नहीं हुआ है। दृष्टान्त गुजरात स्टेट मशीन टूल्स विरुद्ध दोपक जे. देसाई का मामला धारा 25-एच से संबंधित था। इसी तरह से दृष्टान्त पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व गैमन इण्डिया लि. विरुद्ध निरंजनदास तथा ओम प्रकाश विरुद्ध राजस्थान राज्य के मामले भी 25-एच से ही संबंधित थे। इसके अतिरिक्त हस्तगत प्रकरण में रैफरेंस को जो भाषा है उसके अनुसार नियोजक ने प्रार्थी को पुनः नियोजन का अवसर दिये बिना उससे कनिष्ठ व्यक्तियों को नियोजन में लिया, ऐसा सिद्ध नहीं हुआ है। अतः जो दृष्टान्त इस संबंध में पेश हुए वे प्रार्थी की कोई मदद नहीं करते।

निर्णय बिन्दु सं. 3

14. इस बिन्दु को सिद्ध करने का भार अप्रार्थी नियोजक पर था। प्रार्थी के संबंध में जारी कार्यालय आदेश प्रदर्श एम-1 से एम-14 को देखने से प्रार्थी के संबंध में कार्य आदेश 15-15 दिन के लिए तथा प्रदर्श एम-5 को द्वारा 7 दिन के लिए दिये गये थे। इस तरह ये कार्य आदेश एक निश्चित अवधि तक के लिए थे तथा अगले कार्य आदेश पहले कार्य के समाप्त होते ही दूसरे दिन दे दिये गये हों, ऐसा भी नहीं पाया गया है। प्रदर्श एम-1 से एम-14 को देखने से प्रार्थी को भिन्न-2 विभागों में एवं भिन्न-2 कार्य हेतु तथा आकस्मिक तौर पर लिया गया है। इस तरह से प्रार्थी की नियुक्ति अर्थात् उसके संबंध में कार्यालय आदेश एक निश्चित अवधि के लिए थे, यह बखूबी पाया गया है। अधिनियम की धारा 2(ओ)(बीबी) के अनुसार श्रमिक जिनकी सेवा समाप्ति कार्य के संबंध में जारी सविदा की अवधि समाप्त होने के बाद स्वतः ही समाप्त हो जाना पाया गया है। हस्तगत प्रकरण में जो कार्य आदेश (नियुक्ति आदेश) दिये गये हैं वे स्वतंत्र रूप से दिये गये हैं न कि पूर्व के कार्यालय आदेश को नवीनीकरण करते हुए दिये गये हैं। अप्रार्थी की ओर से पेश दृष्टान्त एम.पी. इलैक्ट्रिसिटी बोर्ड विरुद्ध हरी राम नवीनतम निर्णय है। इसके अतिरिक्त ऊपर वर्णित माननीय उच्चतम न्यायालय के निर्णय एम.डी. कर्नाटक हैण्डलूम डैवेलपमेंट कार्पोरेशन विरुद्ध महादेव लक्ष्मण रावल तथा दृष्टान्त 2007। एल. एल.जे. पेज 717 (एस.सी.) गंगाधर पिलई विरुद्ध सीमेन्स लिमिटेड में इसी संबंध में प्रतिपादित करते हुए माना कि जहां ऐसे व्यक्ति जिनको आकस्मिक श्रमिक के रूप में कई वर्षों तक किन्तु कुछ समय के बाद (इन्टरमीटेंटली) कार्य पर लिया गया उसकी सेवा समाप्ति को धारा 2 (ओ) अधिनियम में वर्णित अनुसार छंटनी नहीं कहा जा सकता तथा धारा 2(बीबी) अधिनियम के अनुसार भी ऐसी सेवा समाप्ति छंटनी की परिभाषा में नहीं आती। इस संबंध में जो दृष्टान्त प्रार्थी की ओर से पेश हुए यथा (1) एस.एम. नीलरजकर व

अन्य विरुद्ध डिस्ट्रिक्ट मैनेजर टेलीकॉम, (2) मुख्य सचिव हरियाणा व अन्य विरुद्ध चेताराम, (3) भाग्यराम विरुद्ध सीतामीन अधिकारी औद्योगिक न्यायाधिकरण रोहतक, (4) चंयारमैन-कम-एम.डी. उड़ीसा पथ परिवहन निगम विरुद्ध रमेश चन्द्र में प्रतिपादित सिद्धान्त का अध्ययन किया लेकिन हस्तगत प्रकरण में जैसा कि इस निर्णय बिन्दु में विवेचित हुआ, श्रमिक को आकस्मिक तौर पर व करीब-करीब 15-15 दिन के लिए एवं कुछ आदेश से 7 दिन के लिए ही नियुक्तियां दी गई हैं तथा इस संबंध में ऊपर वर्णित माननीय उच्चतम न्यायालय के नवीनतम निर्णय को देखते हुए जो दृष्टान्त प्रार्थी की ओर से पेश हुए, वे प्रार्थी की कोई मदद नहीं करते। अतः यह निर्णय बिन्दु अप्रार्थी नियोजक की ओर से सिद्ध होना पाया गया है।

निर्णय बिन्दु सं. 4

15. यह निर्णय बिन्दु अनुतोष से संबंधित है और उपरोक्त विवेचन के आधार पर प्रार्थी किसी अनुतोष का अधिकारी नहीं है अतः निर्देश का उत्तर निम्न प्रकार दिया जाता है:

"खेतड़ी कॉपर काम्पलेक्स हिन्दुस्तान कॉपर लि. के प्रबन्धन द्वारा श्री भान सिंह को दिनांक 17-2-1983 से 30-8-92 तक आंतरायिक रूप से आकस्मिक श्रमिक के रूप में नियोजित करने के पश्चात् दिनांक 30-8-92 से सेवा मुक्त करना व उससे कनिष्ठ श्रमिकों को नियोजित करने से पहले प्रार्थी को अवसर नहीं देने की कार्यवाही उचित एवं वैध है। प्रार्थी कोई राहत पाने का अधिकारी नहीं है।"

16. अवाई आज दिनांक 30-7-2008 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केंद्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार हिन्दुस्तान कॉपर लिमिटेड, के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या सीआईटी-56/1996) को प्रकाशित करती है, जो केंद्रीय सरकार को 22-8-2008 को प्राप्त हुआ था।

[सं. एल-43012/5/1996-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CIT-56/1996) of the Central Government Industrial Tribunal/Labour Court Jaipur now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Hindustan Copper Ltd. and their

workman, which was received by the Central Government on 22-08-2008.

[No. L-43012/5/1996-IR (M)]
KAMAL BAKHRU, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 56/96

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल.-43012/5/96-आई.आर. (विविध) दि. 23-11-96

श्री पूरणाम द्वारा श्री ऋषभ चंद जैन, 80, बजरंग विहार, गोपालपुरा रेलवे फाटक के पास, टीक रोड, जयपुर

.....प्राथी

बनाम

एजीक्यूटिव डायरेक्टर, हिन्दुस्तान कॉपर लि. खेतड़ी कॉपर काम्प्लेक्स, खेतड़ी नगर, झुंझनू

.....अप्राथी

वर्णन

पीठासीन अधिकारी: श्री गौतम प्रकाश शर्मा, आर.एच.जे.एस.

प्राथी की ओर से : श्री आर. सी. जैन

अप्राथी की ओर से : श्री मनोज कुमार शर्मा

दिनांक अर्वाई : 30-7-2008

अर्वाई

1. केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनियम हेतु निर्देशित किया है :

"Whether the action of the management of Khetri Copper Complex, Hindustan Copper Ltd., Khetri Nagar, in terminating the services of Shri Puran Ram w.e.f. 30-8-92, after employing him as casual workman w.e.f. 2-12-81 to 30-8-92, intermittently without giving any opportunity of employment before employing workmen junior to him, is justified? If not, to what relief the workman is entitled and from what date?"

2. प्राथी श्रमिक की ओर से विवाद की पुष्टि में अपना स्टेटमेंट ऑफ क्लेम पेश किया गया जिसके संक्षिप्त तथ्य इस प्रकार हैं कि प्राथी अप्राथी संस्थान में दिनांक 20-8-81 से आकस्मिक श्रमिक के रूप में कार्य कर रहा था। नियुक्ति तिथि से प्राथी लगातार कार्य कर रहा था किन्तु अप्राथी के अधिकारियों ने दिनांक 30-8-92 से प्राथी को कार्य देना बंद कर दिया अर्थात् सेवा मुक्त कर दिया। इन्त सेवा

मुक्ति को प्राथी ने इन आधारों पर अनुचित व अवैध बताया कि सेवा मुक्ति से पूर्व उसे कोई नोटिस या नोटिस वेतन तथा मुआवजे का भुगतान नहीं किया गया जो औद्योगिक विवाद अधिनियम, 1947 (जो निर्णय में आगे मात्र अधिनियम लिखा जायेगा) की धारा 25-एफ की अवहेलना है। सेवा मुक्ति के समय अधिनियम की धारा 25-जो व अधिनियम के नियम 77 के तहत कोई वरिष्ठता सूची भी जारी नहीं की। प्राथी को सेवा मुक्त करने के पश्चात् जो कार्य प्राथी करता था उस कार्य के लिए नये श्रमिकों की भर्ती की है जो धारा 25-एच का उल्लंघन है तथा अधिनियम की धारा 25-एन के तहत प्राथी को सेवा मुक्त करने से पूर्व सक्षम सरकार को अनुमति भी नहीं थी। अतः सेवामुक्ति आदेश अनुचित व अवैध बताते हुए प्राथी को कि सेवा मुक्ति आदेश दिनांक 30-8-92 को अनुचित व अवैध घोषित किया जावे, प्राथी को सेवाएं निरन्तर मानते हुए समस्त पिछला वेतन व अन्य लाभ दिलवाये जाने का अर्वाई पारित किया जावे।

3. अप्राथी की ओर से क्लेम का जवाब पेश कर प्रारंभिक आपत्तियां उठाई गई हैं कि प्राथी को आकस्मिक श्रमिक के रूप में अप्राथी संस्थान में विभिन्न अवधियों में नियोजित किया गया जिससे नियोजन का कोई काबूनी अधिकार प्राथी को प्राप्त नहीं होता। आकस्मिक कार्यों के लिए आकस्मिक श्रमिकों को रखने की व्यवस्था संस्थान में रजिस्टर्ड यूनियन की सहमति से प्रचलित है, ऐसे में केन्द्र सरकार द्वारा भेजा गया विवाद औद्योगिक विवाद नहीं है और अधिकरण के क्षेत्राधिकार में नहीं आता है। जवाब में आगे बताया कि प्राथी को आकस्मिक कार्यों हेतु समय पर सविदा स्वरूप रखा जाता था और कार्य सम्पूर्ण होने पर उसका नियोजन स्वतः ही समाप्त हो जाता था, अतः प्राथी की सेवामुक्ति छंटनी की परिभाषा में नहीं आती बल्कि अधिनियम की धारा 2(ओ) (बीबी) के प्रावधानों के अन्तर्गत आती है जो कार्य प्रारंभ के साथ शुरू होकर कार्य की समाप्ति के साथ ही समाप्त हो जाती है। इन आधारों पर क्लेम निरस्त होने योग्य बताया।

4. गुणावगुण पर अप्राथी का जवाब है कि प्राथी को आकस्मिक कार्यों हेतु सविदा अनुसार समय पर रखा गया। दिनांक 30-8-92 तक की अवधि में प्राथी ने आकस्मिक कार्य पर स्व-सहमति से नियोजन प्राप्त किया जो कार्य समाप्ति के साथ स्वतः ही प्राथी की पूर्ण जानकारी के अनुसार समाप्त हो गया, अतः प्राथी का यह कथन कि बिना कारण उसे सेवा से पृथक् कर दिया, गलत है। प्राथी ने अंतिम बार दिनांक 29-8-92 तक सविदा एवं व्यवस्था के अनुसार कार्य किया। आकस्मिक श्रमिक पर अधिनियम के प्रावधान नहीं होते अतः धारा 25-एफ, जी, एच, व एन अधिनियम के प्रावधानों का कोई उल्लंघन नहीं हुआ है न ही किसी श्रम कानून का उल्लंघन किया गया है। अतः प्राथी का क्लेम खारिज होने योग्य बताया।

5. साक्ष्य में प्राथी पूरण राम स्वयं का शपथ पत्र पेश हुआ है जिससे अप्राथी प्रतिनिधि ने जिरह की है। अप्राथी की ओर से श्री जगदीश लाल व भागीरथ सिंह के शपथ पत्र पेश हुए हैं जिससे प्राथी प्रतिनिधि ने जिरह की है। कुछ दस्तावेजात भी प्रदर्श करायें गये हैं जिनका विवेचन यथास्थान किया जायेगा।

6. मैंने दोनों पक्षों की बहस सुनी, पत्रावली का अवलोकन किया। प्रकरण में मेरे समक्ष निम्न बिन्दु तय करने हेतु हैं :

1. क्या प्रार्थी श्रमिक ने विपक्षी संस्थान में दिनांक 20-8-81 से आकस्मिक श्रमिक के रूप में उसकी सेवा मुक्ति की दिनांक 30-8-92 तक निरंतर कार्य किया?
2. क्या प्रार्थी की सेवा समाप्ति अधिनियम की धारा 25 एफ, जी, एच. व औद्योगिक विवाद केंद्रीय नियम 1957 कि नियम 77-78 का उल्लंघन कर की गई?
3. क्या प्रार्थी की सेवा मुक्ति छंटनी की परिभाषा में नहीं आती और धारा 2 (ओ) (बीबी) अधिनियम के अनुसार प्रार्थी का नियोजन आरंभ व समाप्त होता था?
4. अनुतोष?

7. प्रार्थी श्रमिक की ओर से प्रतिनिधि ने अपने बहस में चर्चा कि प्रार्थी की नियुक्ति आकस्मिक श्रमिक के रूप में दिनांक 20-8-81 से हुई, इस तथ्य को स्पष्ट रूप से इन्कार नहीं किया गया है। अतः यह सिद्ध है कि दिनांक 20-8-81 से अप्रार्थी संस्थान में आकस्मिक श्रमिक के रूप में प्रार्थी नियुक्त था। उनको बहस है कि इस तिथि से उसकी सेवा समाप्ति की तिथि 30-8-92 तक प्रार्थी ने विपक्षी संस्थान में निरंतर व बराबर कार्य किया एवं उसे सेवा मुक्त किये जाने से पूर्व उसे न तो कोई नोटिस दिया गया न ही नोटिस वेतन का भुगतान किया गया तथा धारा 25-एफ अधिनियम के अनुसार मुआवजे का भुगतान भी नहीं किया गया। अप्रार्थी संस्थान ने प्रार्थी की सेवा समाप्ति के समय कोई बरिष्ठता सूची जारी नहीं की तथा प्रार्थी से कनिष्ठ श्रमिकों बिनकी सूची प्रदर्श डब्ल्यू-1 पेश की है, जो नियमित वेतन श्रृंखला भी दी गई है। प्रार्थी की सेवा समाप्ति के समय विपक्षी संस्थान में हजारों श्रमिक कार्यरत थे फिर भी अप्रार्थी संस्थान की ओर से प्रार्थी की सेवा समाप्त करने से पूर्व सश्रम सरकार की अनुमति नहीं ली। उनकी आगे बहस है कि एक आवेदन प्रार्थी की ओर से दस्तावेज तलब कराने का पेश किया जिस पर आदेश भी दिये, अप्रार्थी द्वारा कुछ दस्तावेज पेश किये एवं कुछ पेश नहीं किये जबकि दैनिक वेतन भोगी के मामले में रिकार्ड पेश करने का दायित्व संस्थान का होता है। अतः अप्रार्थी संस्थान के विरुद्ध प्रतिकूल अवधारणा ली जाकर प्रार्थी के मामले को सिद्ध माना जाये। प्रार्थी का आदेश निश्चित अवधि का हो, सिद्ध नहीं हुआ है तथा किसी संविदा के तहत हो, ऐसी संविदा भी पेश नहीं हुई है। इस तरह से उनकी बहस है कि प्रार्थी की सेवा समाप्ति का प्रश्नगत आदेश अवैध व अनुचित है एवं अपास्त होने योग्य है। प्रतिनिधि ने अपने तर्कों के समर्थन में प्रतिनिधि प्रार्थी ने निम्नांकित दृष्टांत पेश किये :

1. 2003(97)एफ.एल.आर. 608 (एस.एस. नीलाजकर विरुद्ध टेलीकॉम डिस्ट्रिक्ट मैनेजर कर्नाटक।
2. 2006 एस.सी.सी. (एल. एण्ड एस.) पेज 574 मुख्य सचिव, हरियाणा राज्य व अन्य विरुद्ध चेताराम।
3. 1996(3) एल.एल.जे. पेज 1126 (पंजाब व हरियाणा) भीखाराम विरुद्ध पीठासीन अधिकारी औद्योगिक न्यायाधिकरण रोहतक।

4. 1994 II एल.एल.जे. 1127 (उड़ीसा) चैयर्मेन एवं एम.डी. उड़ीसा एथ परिवहन निगम विरुद्ध नमेश चन्द गौड़ा।
5. 2003(4) एल.एल.एन. 484, राजस्थान राज्य विरुद्ध शेरसिंह व अन्य।
6. 2000(3) आर.एल.आर. 447 (राजस्थान) न्यूनीसोपल कार्पोरेशन कांटा विरुद्ध राजेश्वर श्रुंगी।
7. 1997 डब्ल्यू.एल.सी. (यू.सी.) 114 (राज.) राजस्थान राज्य विरुद्ध छुट्टन लाल व अन्य।
8. (1999) 3 एस.सी.सी. 11 सन्निदा दुबे विरुद्ध मिश्री चोट इटावा।
9. 2004 (3) एल.एल.जे. 555 (एस.सी.) कृष्ण बहादुर विरुद्ध पूर्णा थैटर व अन्य।
10. 1991(1) एल.एल.आर. पेज 577 (राजस्थान) रेलवे मैनेजर यूनियन विरुद्ध नार्दन रेलवे।
11. डब्ल्यू. एल.आर. 1995 (एल.जे.) 72 भागचंद जैन विरुद्ध राजस्थान राज्य पोस्टल मुद्रक मण्डल।
12. 1991(2) एल.एल.आर. पेज 109 (राजस्थान) सूर्य प्रकाश शर्मा विरुद्ध राजस्थान रेकॉर्ड यु.व. थोडा।
13. 1997 डब्ल्यू.एल.सी. (यू.सी.) पेज 104 (राजस्थान) परवार प्रशिक्षण केंद्र, डींग विरुद्ध कीलश चन्द व अन्य।
14. 2002(1) डब्ल्यू.एल.सी. पेज 296 (राजस्थान) अग्रवर्ती क्षेत्रीय ग्रामीण बैंक प्रचार्य भद्रपुर विरुद्ध पीठासीन अधिकारी सी.जी.आई.टी. अजमेर व अन्य।
15. 2005 डब्ल्यू.एल.सी. (यू.सी.) (राज.) पेज 237 निर्देशक, दूरदर्शन केंद्र विरुद्ध जग. सी.आई.टी. व अन्य।
16. 1992(3) डब्ल्यू.एल.सी. (राज.) 56 कन्हैया लाल शर्मा विरुद्ध राजस्थान राज्य।
17. 1994 III एल.एल.जे. 848 (गुजरात) गुजरात राज्य मर्शन टूलस कार्पोरेशन लि. विरुद्ध दीपक जे. वैसा।
18. 2005(8) आर.डो.डी. 3280 (राजस्थान) पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व अन्य।
19. ए.आई.आर. 1979 (एस.सी.) 75 मैसर्स हिन्दुरतान टिन वर्क्स लि. विरुद्ध श्रमिकगण।
20. 1984(48) एफ.एल.आर. 310 (एस.सी.) गैमन इण्डिया लि. विरुद्ध निरंजनदास।
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8. अप्राथी प्रतिनिधि ने अपनी बहस में बताया कि प्राथी स्वयं ने अपने को आकस्मिक श्रमिक होना स्वीकार किया है। इसके अतिरिक्त अप्राथी की ओर से ऐंगेजमेंट आदेश भी पेश हुआ है अतः कार्य समाप्त होते ही उसकी नियुक्ति समाप्त होना माना जावे। प्राथी की नियुक्ति ऐंगेजमेंट आर्डर के अनुसार हुई, इस तथ्य को प्राथी ने चिरह में भी स्वीकार किया है। उनकी आगे बहस है कि प्राथी का नियोजन "कान्ट्रैक्ट फॉर सर्विस" था न कि "कान्ट्रैक्ट ऑफ़ सर्विस"। उनकी आगे बहस है कि वरिष्ठता सूची प्रदर्श डब्ल्यू-1 को प्राथी ने साबित नहीं किया है। इस तरह से प्राथी जो कि आकस्मिक श्रमिक के रूप में नियुक्त हुआ था तथा अप्राथी संस्थान में आकस्मिक श्रमिकों की नियुक्ति हेतु स्थापित श्रम नियोजन विभाग से प्राप्त सूची के अनुसार अर्थात् "कैम्प्युअल लेबर पूल" में से प्राथी की नियुक्ति की गई थी। आकस्मिक नियोजक के मामलों में वरिष्ठता सूची जारी करना व धारा 25-एफ, जी व एच अधिनियम आदि को पालना कतई आवश्यक होना नहीं बताया अतः प्राथी का क्लेम खारिज होने योग्य बताया। अपने तर्कों के समर्थन में विद्वान प्रतिनिधि ने दृष्टान्त (1) 2005 एल.एल.आर. (एस.सी.) एम.पी. इलैक्ट्रिसिटी बोर्ड बनाम हराराम व अन्य तथा (2) (2005) 8 एस.सी.सी. 750 सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धायाबाई अमरसिन पेश किये।

9. मैने बहस पर गौर किया। जो निर्णय बिन्दु प्रकरण में बनाये गये हैं, उनके संबंध में क्रमशः मेरा विनिश्चय इस तरह से है:-

निर्णय बिन्दु सं.1:

10. प्रकारण में प्राथी श्रमिक ने अप्राथी के यहां जो कार्य किया उसके संबंध में कार्य संबंधी आदेश पेश हुए हैं जिनके अनुसार प्राथी ने भिन्न-2 वर्षों में कार्य किया जो अवधि किसी माह में 15 दिन, किसी माह में 14 दिन व किसी माह में 10 दिन आदि रही है। कार्य नियुक्ति तिथि से सेवा मुक्ति की दिनांक तक निरन्तर किया हो, ऐसा प्रकरण में नहीं पाया गया है। सेवा मुक्ति से पिछले एक वर्ष में लगातार 240 दिन कार्य किया हो, ऐसी भी कोई साक्ष्य पत्रावली पर नहीं है। स्टेटमेंट

ऑफ़ क्लेम तथा प्राथी का जो शपथ पत्र पेश हुआ उसमें भी प्राथी का यह कथन नहीं है कि उसने सेवा समाप्ति के एक वर्ष पूर्व की अवधि में 240 दिन लगातार कार्य किया हो। प्राथी की ओर से जो दृष्टान्त पेश हुए उनमें से अधिकतर मामलों में श्रमिक की सेवा मुक्ति से पूर्व एक वर्ष की अवधि में 240 दिन लगातार कार्य करने के तथ्य सिद्ध पाये गये हैं किन्तु हस्तगत प्रकरण में ऐसा नहीं पाया गया है। प्राथी की नियुक्ति दैनिक वेतन भोगी कर्मचारी के रूप में रही है। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम धायाबाई अमरसिन के चरण सं. 18 में वर्णित अनुसार माननीय सर्वोच्च न्यायालय ने माना कि कर्मकार के लिए यह बताया जाना आवश्यक है कि उसने उसकी सेवा समाप्ति से पहले वर्ष में 240 दिन लगातार कार्य किया हो, जो इस प्रकरण में नहीं पाया गया है। अतः यह निर्णय बिन्दु प्राथी की ओर से सिद्ध होना नहीं पाया गया है और उसके विरुद्ध निर्णित किया जाता है ।

निर्णय बिन्दु सं. 2:

11. इस निर्णय बिन्दु में यह देखना है कि क्या अप्राथी ने प्राथी की सेवा समाप्ति की तब धारा 25-एफ, जी व एच अधिनियम तथा औद्योगिक विवाद (केंद्रीय) नियम 1957 (जो कि निर्णय में आगे मात्र नियम कहलायेगा) के नियम 77-78 का उल्लंघन करते हुए को गई है। धारा 25-एफ अधिनियम के लिए यह आवश्यक है कि किसी कर्मकार की सेवा समाप्ति से पिछले वर्ष यदि उसकी सेवा लगातार 240 दिन या उससे अधिक है तब धारा 25-एफ अधिनियम की पालना किया जाना आवश्यक है किन्तु हस्तगत प्रकरण में प्राथी द्वारा लगातार 240 दिन की सेवा होना नहीं पाया गया है। धारा 25-जी अधिनियम में छंटनी की प्रक्रिया संबंधी प्रावधान है जिसके अनुसार यदि ऐसा कर्मकार जो किसी विशेष श्रेणी का हो, तो नियोजक के लिए आवश्यक है कि सबसे नीचे वाले कर्मकार की छंटनी पहले करे अर्थात् नियोजक द्वारा नियोजन में रहें श्रमिकों की वरिष्ठता सूची रखें एवं उक्त वरिष्ठता सूची में जो सबसे नीचे है उनकी सेवा सबसे पहले समाप्त करे। हस्तगत प्रकरण में एक सूची प्रदर्श डब्ल्यू-1 पेश हुई है। इस सूची में प्राथी का नाम नहीं है अतः इस सूची से यह अभिनिर्धारित नहीं किया जा सकता कि प्राथी से नीचे वाले श्रमिकों को सेवा मुक्त नहीं कर प्राथी को सेवा मुक्त कर दिया गया हो। इसके अतिरिक्त प्राथी-दैनिक वेतन भोगी कर्मचारी के रूप में नियुक्त था तथा उसकी नियुक्ति 15-15 दिन के लिए की गई थी जो विशेष कार्य एवं निश्चित अवधि के लिए थी। दृष्टान्त सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत विरुद्ध धायाबाई अमरसिन में माननीय उच्चतम न्यायालय ने प्रतिपादित किया है कि जहां दैनिक वेतन भोगी/आकस्मिक कर्मचारी नियुक्त किये जाते हैं उन मामलों में नियोजक से यह अपेक्षा नहीं की जाती कि वे ऐसे कर्मचारियों की वरिष्ठता सूची बनावें। प्राथी के जो बयान हुए हैं उनको भी मैने देखा है। प्राथी के बयानों में यही आया है कि उससे कनिष्ठ की सेवाएं समाप्त नहीं कर उसकी सेवाएं समाप्त की गई हैं। इसके विपरीत अप्राथी की ओर से श्री धामीरथ सिंह का शपथ पत्र पेश हुआ है जिनमें श्रमिक के संबंध में जारी किये गये कार्य आदेश पेश किये हैं तथा उनके कथनों में आया है कि उन्होंने किसी भी कनिष्ठ को नहीं

हटाया है तथा यह भी बताया है कि प्रार्थी श्रमिक को एक निश्चित अवधि के लिए अगला दया था एवं उक्त अवधि समाप्त होने पर उसको सेवाएं स्वतः ही समाप्त हो गई थी। इस समस्त विवेचन से मेरा निष्कर्ष है कि धारा 25-ए के अधिनियम का उल्लंघन भी हस्तगत प्रकरण में नहीं पाया गया है तथा आकांक्षिक श्रमिकों के रूप में जैसा कि ऊपर विवेचित अनुसार माननीय उच्चतम न्यायालय के दृष्टान्त को देखने से आकांक्षिक रूप पर लगाये गये श्रमिकों की वर्गीकृत सूची रखन भी निर्गोत्रक के लिए आवश्यक नहीं है। इस संबंध में प्रार्थी की ओर से जो दृष्टान्त पेश हुए, उनका मैंने अध्ययन किया। इन सभी दृष्टान्तों में प्रार्थी का 240 दिन लगातार कार्य करने का तथ्य सिद्ध पाया गया था। हस्तगत प्रकरण का रिकॉर्ड भी धारा 25 ए के अधिनियम के उल्लंघन से ही संबंधित है एवं न ही प्रार्थी ने अपनी सेवा समाप्ति के एक वर्ष पूर्व लगातार 240 दिन कार्य किया, बिन्दु सिद्ध किया है अतः मेरा निष्कर्ष गये दृष्टान्त प्रार्थी की कोई मदद नहीं करते -

13. विवेक के संकेत हुए उसकी भाषा के अनुसार उद्या निम्नलिखित में प्रार्थी का एक विवेक देने का अवसर दिये गये। उससे क्रान्ति व्यक्तियों का विचारण में लिया, इस संबंध में जैन कि उद्य विवेकित हुआ है। एका सूची प्रदर्शित है। प्रार्थी ने जिनमें प्रार्थी का नाम नहीं है तथा भी सूची परिशुद्ध सूची हो, ऐसा भी नहीं पाया गया है। अतः प्रार्थी के संबंध में वर्गीकृत सूची का संधारण किया जाना भी विचारण में परीक्षा नहीं पाया गया है। प्रार्थी ने अपने चर्चाओं में जिनके अन्तर्गत संबंधी धर्मपाल, कलारा, रामधर आल सेनो, विनोद कुमार अर्वा आदि के नाम बताये किन्तु रामधर जाल ध विनोद कुमार जाल के निदर्शित अर्वा ही पेश हुए हैं जिनका देखने से उन्हें मजदूर प्रशिक्षु की रूप में निर्गुणित भी नहीं है तथा यह निर्गुणित समझौता दिनांक 2-5-95 का अनुसार देना भी पाया गया है। जबकि प्रार्थी आकांक्षिक श्रमिक के रूप में निर्गुणित था। दृष्टान्त सुन्दर नगर डिस्ट्रिक्ट मजदूर विवाद आगगाई अमरसिन (अन्य वर्गित) के अनुसार आकांक्षिक श्रमिकों के संबंध में वर्गीकृत सूची की अपेक्षा निर्गोत्रक से नहीं की जा सकती तथा ऐसी किसी वर्गीकृत सूची के अभाव में धारा 25 ए के उल्लंघन होता भी नहीं माना गया है। तब 'मार्च' के अनुसार जहाँ निर्गोत्रक की ओर से वर्गीकृत सूची पेश नहीं की गई हो, ऐसे मामले में प्रोत्कृत अवधारणा सभी सौ जा सकती है जब ऐसी वर्गीकृत सूची अस्तित्व में थी, ऐसा श्रमिक द्वारा सिद्ध कर लिया जावे। हस्तगत प्रकरण में श्रमिक की ओर से ऐसा सिद्ध नहीं हो पाया है। अतः प्रकरण में धारा 25 ए के अधिनियम का उल्लंघन होता भी प्रार्थी श्रमिक की ओर से सिद्ध नहीं हो पाया है। प्रार्थी की ओर से इस संबंध में दृष्टान्त पेश हुए जिनमें धारा 25 ए के उल्लंघन का भी उल्लंघन है एवं दृष्टान्त भागचंद जैन विशद नन्द, पुस्तक मावला जिनमें नियम 77 का उल्लंघन का भी मैंने अध्ययन किया है किन हस्तगत प्रकरण में उपावेश विवेचना के अनुसार धारा 25 ए के उल्लंघन की ओर से ऐसा सिद्ध नहीं हो पाया गया है। इसके अतिरिक्त माननीय उच्चतम न्यायालय की गरीबतम निर्णय 2006 11 एन.एच.जी. पेज 1046/एन.पी. जे. विरुद्ध ओम प्रकाश शर्मा में प्रतिपादित

अनुसार यदि रिकॉर्ड धारा 25-ए के उल्लंघन से ही संबंधित हो एवं रिकॉर्ड में श्रमिक की सेवा समाप्ति का बिन्दु तथा नियम 77 का बिन्दु समाविष्ट नहीं हो तो यदि धारा 25 ए के उल्लंघन नहीं पाया गया है तो सेवा समाप्ति के आदेश को अपनाया नहीं किया जा सकता। इसी दृष्टान्त के पैरा 11 में माननीय उच्चतम न्यायालय ने बखुबी वर्णित किया है कि नियम 77 के प्रावधान अज्ञापक होना मात्र भी लिया जावे तब भी यदि निर्गोत्रक ने संबंधित रिकॉर्ड का संधारण नहीं किया हो तो मात्र इसी आधार पर श्रमिक, पुनः सेवा में आने का अधिकारी नहीं हो जाता। हस्तगत प्रकरण में श्रमिक को सेवा 240 दिन लगातार होने का तथ्य भी सिद्ध नहीं हुआ है।

13. अन्य दृष्टान्त जो प्रार्थी की ओर से ऊपर वर्णित अनुसार इस संबंध में पेश हुए वे तथ्यों की भिन्नता व इनमें प्रतिपादित सिद्धांत को देखते हुए हस्तगत प्रकरण में लागू नहीं होते हैं। तथा दृष्टान्त आर. एम. चेलाट्टी विरुद्ध अधिष्ठाता अधिनियम में 240 दिन कार्य किया, इस तथ्य को सिद्ध करने के बाद के संबंध में प्रतिपादित किया गया है; दृष्टान्त राजस्थान राज्य विरुद्ध ओर सिंह में लगातार नियोजन किस तरह से सिद्ध होगा, संबंधी बताया गया है। इसी तरह से दृष्टान्त म्यूनीसीपल कार्पोरेशन ऑफ विरुद्ध गम चन्द्र श्रीरी के मामले में भी प्रतिपादित किया गया है कि प्रत्येक एक वर्ष की अवधि में श्रमिक ने 240 दिन कार्य किया, संबंधी प्रतिपादित किया गया है। प्रकरण में श्रम न्यायालय द्वारा श्रमिक का 240 दिन कार्य किया जाना माना गया था। हस्तगत प्रकरण के तथ्य इस तरह से भिन्न पाये जाते हैं। दृष्टान्त राजस्थान राज्य विरुद्ध सुंदर लाल में भी अधिनियम की धारा 25 ए के, जी व ए के उल्लंघन माना गया था जबकि हस्तगत प्रकरण में ये तथ्य श्रमिक की ओर से सिद्ध नहीं हुए हैं। दृष्टान्त समिष्टा दुबे विरुद्ध सिटी ऑफ इटावा के नोट 'बी' की ओर ध्यान दिलाया गया जिसके अनुसार पहले व्यक्ति आया वह बाद में जायेगा संबंधी विवेचना की गई है एवं यह भी प्रतिपादित किया गया है कि दैनिक वेतन भागी मामले में भी ये नियम लागू होंगे किन्तु इस निर्णय बिन्दु में वर्णित अनुसार प्रार्थी का स्थान दैनिक वेतन भागी की सूची में कहा था, ऐसा प्रार्थी की ओर से सिद्ध नहीं हुआ है। दृष्टान्त कृष्ण बहादुर विरुद्ध पूर्णा धियेंटर में भी माननीय उच्चतम न्यायालय ने धारा 25ए(बी) अधिनियम व नियम 77-ए के उल्लंघन माना लेकिन हस्तगत प्रकरण में प्रार्थी की सेवा 240 दिन हुई हो, सिद्ध नहीं हुआ है। दृष्टान्त रेलवे केन्द्रीय लैबर यूनियन विरुद्ध नरदन रेलवे के तथ्य भी हस्तगत प्रकरण के तथ्यों से भिन्न हैं। इस दृष्टान्त में श्रमिक द्वारा धारा 25-जी का उल्लंघन होता माना गया था किन्तु हस्तगत प्रकरण में श्रमिक की ओर से ऐसा सिद्ध नहीं हुआ है। दृष्टान्त भागचंद जैन विरुद्ध राजस्थान मजदूर पुस्तक मण्डल में भी नियम 77 व 78 का उल्लंघन माना गया किन्तु हस्तगत प्रकरण में ऐसा उल्लंघन किस तरह हुआ, सिद्ध नहीं हुआ है। इसी तरह से अन्य दृष्टान्त एस. पी. शर्मा विरुद्ध राजस्थान टैक्स बूक बोर्ड, जयपुर पटवार प्रशिक्षण केन्द्र डींग विरुद्ध कैलाश चन्द व अन्य अरावली क्षेत्रीय ग्रामीण बैंक सवाई माधोपुर विरुद्ध पीठादेश अधिकारी सो.आई.टी. निदेशक दूरदर्शन

केन्द्र विरुद्ध न्यायाधीश, सी.आई.टी. व अन्य एवं कन्हैयालाल शर्मा विरुद्ध राजस्थान राज्य के मामलों में श्रमिक की ओर से धारा 25-एफ जी व एच का उल्लंघन होना सिद्ध हुआ था जो हस्तगत प्रकरण में सिद्ध नहीं हुआ है। दृष्टान्त गुजरात स्टेट मशीन टूल्स विरुद्ध दीपक जे. देसाई का मामला धारा 25-एच से संबंधित था। इसी तरह से दृष्टान्त पृथ्वीराज विरुद्ध श्रम न्यायालय जोधपुर व गैमन इण्डिया लि. विरुद्ध निरंजनदास तथा ओम प्रकाश विरुद्ध राजस्थान राज्य के मामले भी 25-एच से ही संबंधित थे। इसके अतिरिक्त हस्तगत प्रकरण में रैफरेंस की जो भाषा है उसके अनुसार नियोजक ने प्रार्थी को पुनः नियोजन का अवसर दिये बिना उससे कनिष्ठ व्यक्तियों को नियोजन में लिया, ऐसा सिद्ध नहीं हुआ है। अतः जो दृष्टान्त इस संबंध में पेश हुए वे प्रार्थी की कोई मदद नहीं करते।

निर्णय बिन्दु सं. 3:

14. इस बिन्दु को सिद्ध करने का पार अप्रार्थी नियोजक पर था। प्रार्थी के संबंध में जारी कार्यालय आदेश प्रदर्श एम-1 से एम-14 को देखने से प्रार्थी के संबंध में कार्य आदेश 15-15 दिन के लिए तथा प्रदर्श एम-5 के द्वारा 7 दिन के लिए दिये गये थे। इस तरह ये कार्य आदेश एक निश्चित अवधि तक के लिए थे तथा अगले कार्य आदेश पहले कार्य के समाप्त होते ही दूसरे दिन दे दिये गये हों, ऐसा भी नहीं पाया गया है। प्रदर्श एम-1 से एम-14 को देखने से प्रार्थी को भिन्न-2 विभागों में एवं भिन्न-2 कार्य हेतु तथा आकस्मिक तौर पर लिया गया है। इस तरह से प्रार्थी की नियुक्ति अर्थात् उसके संबंध में कार्यालय आदेश एक निश्चित अवधि के लिए थे, यह बखूबी पाया गया है। अधिनियम की धारा 2(ओ)(बीबी) के अनुसार श्रमिक जिनकी सेवा समाप्ति कार्य के संबंध में जारी संबंध की अवधि समाप्त होने के बाद स्वतः ही समाप्त हो जाना पाया गया है। हस्तगत प्रकरण में जो कार्य आदेश (नियुक्ति आदेश) दिये गये हैं वे स्वतंत्र रूप से दिये गये हैं न कि पूर्व के कार्यालय आदेश को नवीनीकरण करते हुए दिये गये हैं। दृष्टान्त 2007। एल.एल.जे. 696 (एस.सी.) एम.डी. कर्नाटक हैण्डलूम डेवेलपमेंट कॉर्पोरेशन विरुद्ध महादेव लक्ष्मण रावल तथा दृष्टान्त 2007। एल.एल.जे. पेज 717 (एस.सी.) गंगाधर पिलई विरुद्ध सीमेन्स लिमिटेड में इसी संबंध में प्रतिदिन करते हुए माना कि जहां ऐसे व्यक्ति जिनको आकस्मिक श्रमिक के रूप में कई वर्षों तक किन्तु कुछ समय के बाद (इन्टरमीटेंटली) कार्य पर लिया गया उसकी सेवा समाप्ति को धारा 2(ओ) अधिनियम में वर्णित अनुसार छंटनी नहीं कहा जा सकता तथा धारा 2(बीबी) अधिनियम के अनुसार भी ऐसी सेवा समाप्ति छंटनी की परिभाषा में नहीं आती। इस संबंध में जो दृष्टान्त प्रार्थी की ओर से पेश हुए तथा (1) एस.एम. नोलाजकर व अन्य विरुद्ध डिस्ट्रिक्ट मैनेजर टेलीकॉम, (2) मुख्य सचिव हरियाणा व अन्य विरुद्ध चेताराम, (3) भीखूराम विरुद्ध पीठासीन अधिकारी औद्योगिक न्यायाधिकरण रोहतक, (4) चैयरमैन-कम-एम.डी. उडोसा पथ परिवहन निगम विरुद्ध रमेश चन्द्र में प्रतिपादित सिद्धान्त का अध्ययन किया लेकिन हस्तगत प्रकरण में जैसा कि इस निर्णय बिन्दु में विवेचित हुआ, श्रमिक को आकस्मिक तौर पर व करीब करीब 15-15 दिन के लिए एवं कुछ आदेश से 7

दिन के लिए नियुक्तियां दी गई हैं तथा इस संबंध में ऊपर वर्णित माननीय उच्चतम न्यायालय के नवीनतम निर्णय को देखते हुए जो दृष्टान्त प्रार्थी की ओर से पेश हुए, वे प्रार्थी की कोई मदद नहीं करते। अतः यह निर्णय बिन्दु अप्रार्थी नियोजक की ओर से सिद्ध होना पाया गया है।

निर्णय बिन्दु सं. 4:

15. यह निर्णय बिन्दु अनुतोष से संबंधित है और उपरोक्त विवेचन के आधार पर प्रार्थी किसी अनुतोष का अधिकारी नहीं है अतः निर्देश का उत्तर निम्न प्रकार दिया जाता है:

“खेतड़ी कॉपर काम्प्लैक्स हिन्दुस्तान कॉपर लि. के प्रबंधन द्वारा श्री पूर्ण राम को दिनांक 2-12-1981 से 30-8-92 तक आंतराविक रूप से आकस्मिक श्रमिक के रूप में नियोजित करने के पश्चात दिनांक 30-8-92 से सेवा मुक्त करना व उससे कनिष्ठ श्रमिकों को नियोजित करने से पहले प्रार्थी को अवसर नहीं देने की कार्यवाही उचित एवं वैध है। प्रार्थी कोई राहत पाने का अधिकारी नहीं है।”

16. अर्बाई आज दिनांक 30-7-2008 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2648—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कॉर्पोरेशन के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, चंडीगढ़ के पंचाट (संदर्भ संख्या आई.डी.-27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

[सं.एल. 42012/2/2006-आईआर(एम)]

कमल बाख्रू, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2648—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I.D.-27/2007) of the Central Government Industrial Tribunal/Labour Court No.-I, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers, in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on 22-8-08.

[No. 1-42012/2/2006-IR(M)]

KAMAL BAKHURU, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1
CHANDIGARH**

Case No. I.D. 27/2007

Sh. Ramesh Singh S/o Sh. Wazir Singh, Village Badha, PO
& Tehsil Fazilka, Distt. Ferozepur

.....Applicant

Versus

The Regional Manager, Central Warehousing Corporation,
Chandigarh Region, Bays No. 35-38, Sector-4, Panchkula
(Haryana)-134112

.....Respondent

APPEARANCES

For the workman: Workman in person.
For the management: Shri Pardeep Sharma

AWARD

Passed on 8-8-08

Central Govt. vide notification No. L-42012-2/2006-
IR(M) dated 27-4-2007, has referred the following dispute
to this Tribunal for adjudication:

"Whether the action of the M/s H&T Contractor,
Contractor of Central Warehousing Corporation in
terminating the services of Sh. Ramesh Singh, Ex-
Helper w.e.f. 1-1-2006 without complying with the
provisions of the ID Act, 1947 is just and legal? If
not, to what relief the workman is entitled to?"

The present reference was made by the Central Govt.
on the failure of conciliation proceeding for adjudication
of the matter referred in the schedule referred above and
the workman prayed for declaring the action of the
management as illegal and invalid and for reinstatement in
service with full backwages and all consequential benefits
in the interest of justice, equity and fair play.

As per office memorandum dated 30-4-08 this case
was fixed in pre lok adalat meeting on 8-8-2008 for its
disposal by adopting the mediation and conciliation
mechanism. With the efforts of the Tribunal, the workman
agreed to withdraw his reference. The management agreed
that they will try to provide the work to the workman with
the contractor as per the policy of the govt. and as per the
reference made by the Central Govt. within a reasonable
time. It is proposed to dispose off this reference in
Lok Adalat. Accordingly the reference is returned to the
Central Govt. as settled in Lok Adalat. Central Govt. be
informed. File be consigned to record.

Chandigarh

8-8-2008

G. K. SHARMA, Presiding Officer

नई दिल्ली 22 अगस्त, 2008

का.आ. 2649—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार अर एम डी
भवनाथपुर लाईम स्टोन मईन्स जे पब्लिश के संदर्भ निबंधकों और
उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में
केंद्रीय सरकार औद्योगिक अधिकरण-अम न्यायालय सं-1, धनबाद
के पंचाट (संदर्भ संख्या -84-2004) को प्रकाशित करती है, जो
केंद्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

[सं. एन. 29015/3/2004-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2649—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the Central
Government hereby publishes the award (Ref. No. 84/2004) of
the Central Government Industrial Tribunal Labour Court
No.-1, Dhanbad now as shown in the Annexure in the
Industrial Dispute between the employers, in relation to
the management of RMD Bhawnathpur Lime Stone mines
and their workman, which was received by the Central
Government on 22-8-08.

[No. L-29015/3/2004-IR(M)]

KAMAL BAKHRI, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD.**

PRESENT,

Shri H.M. Singh, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)
(d) of the I.D. Act, 1947

Reference No.84 of 2004**PARTIES:**

Employers in relation to the management RMD
Bhawnathpur Lime Stone Mines and their workmen.

APPEARANCES:

On behalf of the workman : Mr. S.N.Goswami,
Advocate

On behalf of the employers : Mr. D. K. Verma, Advocate.
State : Jharkhand Industry : Lime Stone.

Dated, Dhanbad the August, 2008.

AWARD

The Govt. of India, Ministry of Labour, in exercise of
the powers conferred on them under Section 10(1)(d) of
the I.D. Act, 1947 has referred the following dispute to this
Tribunal for adjudication vide their Order No. L-29015/3/
2004 IR(M) dated, the 15th July, 2004.

SCHEDULE

"Whether the action of the management of Raw Material Division, Sail Bhawanathpur Lime Stone Mines, Jharkhand, in forcefully retiring Shri Sugrew Biyar Mahato even the workman has represented that this actual date of birth is 14-11-55 and not 14-11-1942 as entered by the management in the service records of the company legal and justified? If not, to what relief the workman concerned is entitled?"

2. In this case a settlement petition has been filed under signature of both the parties. Perused the settlement petition and heard both sides. I find that the terms of settlement are fair, proper and in accordance with the principle of natural justice. Accordingly an Award is passed in this case in terms of the settlement which forms part of the Award as Annexure.

H. M. SINGH, Presiding Officer

ANNEXURE

**BEFORE THE LEARNED CGIT-CUM-LABOUR
COURT-I, DHANBAD**

Ref. Case No. 84/2004

Management of Bhawanathpur Limestone Mines said
RMD

Vs.

Sugrew Biyar Mahato represented by Bokaro Steel
Workers Union

Humble Potition on behalf of abovenamed
management, Most respectfully sheweth :

1. That the above reference case is related with the dispute of date of birth of Sri Sugrew Biyar Mahato who was an employee of Bhawanathpur Limestone Mines and was superannuation from services of the Company w.e.f. 30-11-2002.

2. That against the said superannuation the union raised dispute which was being adjudicated by the Conciliation officer and subsequently the Ministry of Labour, Govt. of India Vide order dated 15-05-2005 referred the said dispute before the Hon'ble Tribunal under the following schedule :

"Whether the action of management of Raw Materials Division, Sail, Bhawanathpur Limestone Mines, Jharkhand, in forcefully retiring Shri Sugrew Biyar Mahato even the workman has represented his actual date of birth as 14-11-1955 and not 14-11-1942 as entered by the Management in the service records of the Company, legal and justified? If not to what relief the workman concerned is entitled ?

3. That the above reference case is pending before your Hon'ble Court for long time.

4. That Sri Sugrew Biyar Mahato, repersented by the Union, vide letter No. BSWU/BNP/07-98 dtd. 10-07-2007,

requested to settle the dispute out of court. Copy of the said letter is enclosed at Annexure-A.

5. That against the workman vide Letter dtd. Nil which has been received by management under Ref. No.411 dtd. 13-03-08, requested the management to send him for medical examination in order to ascertain his age and thereafter reappoint him. Further, it has been stated in the said letter that no claim shall be made towards back wages copy of the letters of the workman is enclosed and marked as Annexure-B.

6. That the management is also agreeable to settle the issue and is agreed to send the workman for medical examination before the medical board for ascertainment of his age and as per the report of the medical board Shri Sugrew Biyar will be reappointed.

Under the above circumstances, if is prayed that your honour may graciously be pleased to pass order for sending the workman to the medical board for ascertainment of his age and as per the medical report Sri Sugrew Biyar Mahato will be reappointed to the post of Khalasi grade and Sri Biyar shall not claim any back wages or any benefits whatsoever during the period against which the workman has not done any work.

2nd for this act of kindness the workman represented by the Bokaro Steel workers Union shall ever pray.

Dated _____ For & on behalf of
Bhawanathpur Limestone Mines, Sail, RMD
No. - BSWU/BNP/07-98 Dtd. 10-7-2007.
To
The Executive Director (Incharge),
Sail, RMD, Kolkata.

Sub : In the matter of settlement in respect of Sri Sugrew Biyar Mhato, Staff No. 673823, Sail, RMD/ Bhawanathpur Mines Distt. Carhwa (Jharkhand) in reference case No. 84/2004 in C.G. I.T.No. I at Dhanbad.

Dear Sir,

With reference to the above, our spensering Union would like to request that the Reference case No. 84/2004 is panding for long time before the CGI Tribunal No.1 at Dhanbad for further Cross Examination of MW-I. C.P.C. Tiwary, the then AGM (Personnel), Bhawcathpur Limestone Mines(Jharkhand). It is submitted that Sri Sugrew Biyar Mahato is landlooser and his employment was provided against the scheme of displaced person.

His date of birth has been assessed by Medical Officer, Bhawanathpur Hospital on 14-11-87 as 14-11-1955 and on Asls of the medical report/ examination his date of birth has been recorded in relevant statory records, issued Identity card bearing No. 775 and No. 673823. It is out set to mention here to that one another workman namely Subai Biyar Mahato was also conducted Medical Exam. on the same date & time and his date of birth recorded 14-11-1942 having staff No. 673740, who has been retired from service under VRS in the 1998.

That the Management has wrongly made entry the date of Birth the service records of the Subai Biyar Mahato as 14-11-1942 in the service records of Sugrew Biyar Mahato and made premature retirement on 14-11-2002 to the concerned workman Sri Sugrew Biyar Mahato which is premafais dispute of the above reference.

That our sponsoring Union would like to once again request for consideration to maintain industrial peace and harmony and for expedite the above case under Settlement out of Court subject of the Memorandum of settlement to be arrived under Rule 58(4) of the I.D. Act 1947 with the terms and conditions that the concerned workman Sri Sugrew Biyar Mahato is to be treated in continuous service and reinstatement in service.

(R.S. Chaturvedi)
Vice President
B.S.W.U.(INTUC)

Copy to : DGM(HN-P-TD) -for needful action please.

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2650 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री एन कुंजन पिल्लई, लाइसेन्स्ड कस्टम हाउस एजेंट के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इर्नाकुलम के पंचाट (संदर्भ संख्या आईडी-321/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

(सं. एन. 35012/1/2000-आईआर(एम))

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2650—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.ID 321/2006) of the Central Government Industrial Tribunal/Labour Court Ernakulam now as shown in the Annexure to the Industrial Dispute between the employers, in relation to the management of Sh. N. Kurian Pillai, Licensed Customs House Agent and their workman, which was received by the Central Government on 22-8-08.

[No. L-35012/1/2000-(R(M))]

KAMAL BAKTHRU, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM

Present : Shri P.L. Norbert, B.A., LL.B. Presiding Officer
(Friday the 27th day of June 2008/6th Ashada 1930)

I.D.321/2006

(I.D.9/2000 of Labour Court, Ernakulam)

Workman : Sri. Mani, S/o Sri. Karunakaran,
"Manoop Nivas",
H.No.23/1796, Benny Road,
Palluruthy, Kochi.

Management :

Sri N. Kunjan Pillai,
Licensed Customs House
Agent, Shipping Clearing &
Forwarding Agent,
P.B.No.652, Kowdi &
Company Building, 1st Main
Road, Kochi.

By Adv. Sri. Ashok B. Shenoy.

This case coming up for hearing on 27-06-2008, this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Dispute Act challenging the action of the management in not providing employment to the worker Sri. Mani.

On reference notices were issued to worker as well as the management. Though management entered appearance worker remained absent. Notice was issued to the worker in October 2007. So far he has not appeared nor a representative is appointed. In the said circumstances it has to be presumed that there is no existing dispute for adjudication.

In the result an award is passed finding that the action of the management in not providing employment to the worker Sri. Mani is legal and proper and the worker is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of June, 2008.

P. L. NORBERT, Presiding Officer

Appendix- Nil.

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2651 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैलडिला आयसन ओर प्रोजेक्ट के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईडी/एलसीआर/257/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

(सं. एन. 29015/3/99-आईआर(एम))

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2651—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.CGIT/LC/R/257/99) of the Central Government Industrial Tribunal/Labour Court Jabalpur now as shown in the

Annexure in the Industrial Dispute between the employers, in relation to the management of Bailadila Iron Ore Project and their workman, which was received by the Central Government on 22-8-2008.

[No. L-29015/3/99-IR(M)]

KAMAL BAKHRU, Desk Officer

Annexure

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/257/99

PRESIDING OFFICER : SHRI C. M. SINGH

The Vice President,

Bastar Khadan Mazdoor Sangh,

2/B, New Colony,

Kirandul

..... Workmen/Union

Versus

The General Manager,

Bailadila Iron Ore Project,

Deposit No. 14, Kirandul

Distt. Bastar (MP)

.....Management

AWARD

Passed on this 6th day of August, 2008

1. The Government of India, Ministry of Labour vide its Notification No. L-29015/3/99-IR (Misc.) dated 16-7-99 has referred the following dispute for adjudication by this tribunal:-

"Whether the demand of Bastar Khadan Mazdoor Sangh, against the management of Bailadila Iron Ore Project Deposit No. 14, Kirandul, Distt. Bastar for granting of pay scales to Shri J.K. Ghos and other senior samplers at par with the Senior Mechanics, Senior Mechanic-cum-Operator, Senior Electrician and Senior Driller is justified? If so, to what relief the workmen are entitled?"

2. Vide order dated 6-12-06, passed on the order sheet of this reference proceeding, the reference proceeded ex parte against the workmen/Union. No. statement of claim has been filed on behalf of workmen/Union.

3. The case of the management in brief is as follows. The NMDC Ltd. is having units in various states. The following main Unions are working in various projects of NMDC Ltd. leaving a few others:-

1. Samyukta Khadan Mazdoor Sangh (AITUC)
2. Metal Mines Workers Unions (INTUC)
3. Donimalai Iron Ore Project Employees Assn.
4. DHKMS, Panna
5. HKMS, Panna
6. NMDC Employees Union, Calcutta
7. NMDC Employees Union, Hyderabad
8. Staff Union NMDC, Hyderabad.

The above Unions have formed themselves into Federation called "All India NMDC Workers Federation". All disputes between the management and the employees

are settled through mutual discussions and thereafter by Conciliation settlement. There was a periodical settlement between the Management and the Federation. The first settlement took place on 30-10-71. It was followed by Conciliation settlement dated 15-2-76, 23-8-80 and 17-9-83. All these settlements are in existence. The extract of the relevant provision of the aforesaid settlements filed herewith and marked as Annexure M/2 to M/5. The case regarding pay scale of all categories of workman of the Corporation including the pay scale of Sr. Samplers were rationalised and settled in conciliation settlement dated 30-10-1971, these scales were subsequently revised by conciliation settlement dated 15-2-1976. These scales again revised by Conciliation settlement dated 30-8-1980, 17-9-1983, 16-12-1989 & 18-9-1995 at the Corporate level between the management of NMDC Ltd. and workmen represented by All India NMDC Workers Federation, who are sole bargaining agent of the Corporation and accordingly the pay scale of Sr. Samplers were revised from time to time in accordance with the above settlements. It also mentioned that the issue pertaining to the revision of pay scale of Sr. Samplers are common in nature and such issue are settled in consultation with All India NMDC Workers Federation at Corporate level along with other categories of workman as has been done vide the above Tripartite Settlement which is binding on the management as well as workman of the Corporation. It is further submitted that issue regarding the revision of pay scale to sampling categories was discussed by the appropriate Bipartite Committee from time to time and accordingly their pay scales were revised along with other categories of workmen in the above settlement.

4. As the case proceeded ex parte against the workmen/Union, there is no evidence on behalf of workmen/Union on record. The management in order to prove their case filed affidavit of their witness Shri S. Babji, then working as Dy. Manager (Personnel) in NDMC Ltd., Bailadila Iron Ore Mine, Kirandul Complex.

5. I have heard Shri A. K. Shashi, Advocate counsel for the management. I have very carefully gone through the evidence on record.

6. The case of the management is fully established and proved from the uncontroverted and unchallenged affidavit of their witness Shri S. Babji.

7. Therefore the reference is decided ex parte in favour of the management and against the workmen without any orders as to costs holding that the demand of Bastar Khadan Mazdoor Sangh, against the management of Bailadila Iron Ore Project Deposit, No. 14, Kirandul, Distt. Bastar for granting of pay scales to Shri J.K. Ghos and other senior samplers at par with the Senior Mechanics, Senior Mechanic-cum-Operator, Senior Electrician and Senior Driller is not justified and therefore the workmen are not entitled to any relief.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 22 अगस्त, 2008

AWARD

का.आ. 2652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट ऑथोरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-2, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-2/44/2007) (पुराना सं. सीजीआईटी-1/15/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-08 को प्राप्त हुआ था।

[सं. एल-11015/2/2003-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/44/2007 (old No. CGIT-1/15/2003) of the Central Government Industrial Tribunal-cum-Labour Court No-2, Mumbai now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Airport Authority of India, and their workman, which was received by the Central Government on 22-08-2008.

[No. L-11015/2/2003-IR (M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No.2, MUMBAI

PRESENT

A. A. LAD, Presiding Officer

Reference No. CGIT-2/44 of 2007

(Old No. CGIT-1/15 of 2003)

Employers in Relation to the Management of Airport
Authority of IndiaAirport Authority of India,
Chhatrapati Shivaji International Airport
Terminal I-B, Mumbai

....1st Party

AND

Their Workmen represented by
Indian Airport Employees Union,
Having its office at CPWD Workers Colony
Sahargaan, Mumbai 400 099

.... 2nd Party

APPEARANCE

For the Employer: Mr. Shamrao Patil &
Mr. Avinash Patil, AdvocatesFor the Workmen: Mr. A.P. Kulkarni, Mrs. Monika
Sakhrani, Advocates

Date of reserving Award: 02-05-2008

Date of passing of Award: 26-05-2008

The matrix of the facts as culled out from the proceedings are as under:

2. The Government of India, Ministry of Labour by its Order No.L-11015/2/2003-IR(M) dated 7th March, 2003 & No. L-11015/2/2003-IR(Misc) dated 9.10.2007 in exercise of the powers conferred by clause (d) of sub-section (i) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?

2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?

3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

3. To support the subject matter in the reference the Statement of Claim is filed by the 2nd Party, Union through its General Secretary, at Exhibit U/3 B making out the case that, the present reference is concerning to 41 workmen. Out of these one workman has expired and one workman is no longer in service. 1st Party, employers, (hereinafter referred to as 'Authority') carry out its activities at various places in India such as Mumbai, Delhi, Chennai, Calcutta Kolkata, etc. in all around 120 Airports all over the country. The total work force employed by the employer company consists of permanent employees, casual workers and contract employees. The present proceedings relate to a set of workmen numbering to (20+9+ 12 = 41) workmen, whose names and other details are mentioned in the list enclosed with it at Annexure I Concerned Workmen are working in the Cargo Complex & Import Ware House, Conveyor Belt and Electrical Maintenance. Out of these workmen 20 workmen (i.e. Loaders) are doing the work of loading and unloading of Cargo who are called as Casual Loaders and the remaining workmen of which the first nine are employed as Conveyor Belt Operation and Maintenance workers at Terminal I-A and the rest of 12 are employed at Terminal II-B and they are doing the work in connection with electrical maintenance at Division I & II. At present Division II only is in existence, which is an integral part of the regular, permanent and perennial activities of the 1st Party i.e. Airport Authority of India. The duties carried out by the Concerned workmen are of such a nature that the same have never been severable from the main activities carried out by the employer at various airports in India. The Mumbai Airport is largest Airport in India having domestic terminal building at Santacruz and International Terminal at Sahar, Mumbai. At domestic terminal at Santacruz there is largest traffic in India and there is

constant flow of passengers and cargo traffic, using the airport facilities. The services rendered by the workers, irrespective of their category, are of important nature because the continuous flow of passengers and cargo. As far as international passengers are concerned the nature of duties entrusted to all the workmen, including the workers concerned, is of vital importance, as the international passengers carry on impression about our country based on their views of the Airports. The domestic terminal building has two terminals which are known as Terminal IA from where the flights of Indian Airlines and Alliance Air take off and land and the other terminal is known as Terminal IB from where the flights of private airlines such as Jet Airlines, Sahara Airlines, etc. take off and land. It is submitted by the Union as far as the activities of the 1st Party irrespective of locations where the workmen concerned are working, are concerned the same are interconnected and inter-linked with each other. There is integrality of activities and the nature of duties performed by all the workmen irrespective of their status viz. permanent, casual, temporary, contract labours etc. cannot be separated from each other. Union further submitted that, as far as 20 workmen employed at Cargo Complex & Import Warehouse are concerned, there is no contract since 1st January, 1993. These workmen are called as 'Departmental Casual Loaders' and they are being paid wages departmentally, from 1st January, 1993 irrespective their dates of appointments in terms of the orders passed by the Division Bench of the Hon'ble Bombay High Court on 3rd May, 1991 in Writ Petition No. 1494 of 1998. 2nd Party Union further submitted that, the Airports Authority Act, 1994 provides for establishment of two independent Divisions i.e. (1) The International Airports Division (AD) and (2) National Airport Division (NAD). The NAD is responsible for creation and maintenance of Cargo facilities at the international airports. 1st Party, Authority is the custodian of all imported goods and they have further appointed Air India as their ground handling Agents at the Air Cargo Complex. All the imported goods are received by Air India General Handling Agency i.e. (GHA) from the carriers for warehousing with them and ten days old uncleared cargo is thereafter transferred to the heavy cargo warehouse of the Authority and import warehouses of the Authority. The latter is situated at the distance of 1.30 kms. Approximately. It is further submitted by the Union that only the normal cargo, including the perishable, imports, hazardous goods and strong items are subsequently transferred to Air India (GHA) and all commercial air cargo weighing less than 100 kgs. and which is lying uncleared at the Air India (GHA) warehouse for more than 10 days is transferred from Cargo Terminal to the 1st Party - Authority's Import warehouse for further handling departmentally. Similarly, all commercial import cargo weighing more than 100 kgs. and lying uncleared for more than 14 days are transferred from Air India (GHA) to the Authority's new heavy cargo shed. Union further

submitted that at the Import Warehouse the Authority has employed 20 workers as loaders who are directly employed under the Authority, employer, as permanent workmen apart from managerial, supervisory and clerical staff. The concerned workmen have been colloquially leveled and called as contract workers used to perform the same, similar and identical duties, side by side along with the permanent loaders and the nature of work performed by both these sets of workmen was absolutely the same. The Cargo operations at Mumbai Airport include handling of import cargo, export cargo, passenger baggages, ware-house, auction of goods etc. and the imported cargo is broadly divided into Heavy Cargo i.e. packages weighing more than 100 kgs. and light cargo below it and is accordingly shifted to heavy/light cargo sheds where parties and agents come and claim their goods. Operations of the loaders at these import light cargo Sheds include receiving the goods, stacking/arranging them on racks and forwarding the cargo and to give delivery to the claimants. It is submitted by the Union that, the work of loading the light cargo Sheds was carried out by around 120 workmen i.e. permanent loaders of Air India, Prior to 1st November, 2002 Import Light Cargo not claimed by the parties/agents from the sheds for more than 10 days was shifted by the a Authority for further handling to the import house which work was carried out by 20 permanent loaders and 21 so called contract loaders of the Authority. These 41 loaders received the 10 days old cargo from Air India at the Import Warehouse, stacked them on racks according to their location, forwarded the cargo and gave delivery to the claimants. After 45 days these goods are taken for auctioning when these loaders transfer the goods to another floor and process them for the same. The work of handling 10 days old light cargo was initially performed by 20 permanent loaders directly employed by the Authority. It is further submitted by the Union that, due to increase in volume of cargo and the resultant increase in the work of loading and related handling work, the 1st Party employer herein i.e. Authority commissioned appointment of 16 extra loaders in 1986. However, instead of appointing permanent loaders the Authority appointed 26 contract workers to work alongwith the regular loaders in the operations. From 1st November, 2002 Authority took over the ground handling work of 22 Airlines from Air India. Thus Authority has a heavy cargo Shed and light cargo shed in the Cargo Complex for ground handling cargo of these 22 Airlines. However, the work of import light cargo which was carried out by 120 permanent workmen/loaders of Air India is now being contracted out by the Authority (presently on 30 days temporary contracts) to M/s. Omega Enterprises, who has employed about 120 contract workers to carry out the said work. However, from 1st November, 2002 the 1st Party employer has not shifted 10 days old light cargo to the warehouse. As a result thereof 40 loaders employed by the Authority for shifting and further handling at the import warehouse have been artificially displaced from their work Union

submitted that, though the permanent loaders numbering 20 have been shifted to do other work, they receive their wages, etc. at much higher rates than the workmen i.e. the concerned loaders. As mentioned hereinabove 40 loaders employed by the Authority have been artificially displaced from their work. It is submitted by the Union that, this is totally artificial situation created by the 1st Party employer with malafide intentions and with a view to create more paper records against the concerned workmen. It is also submitted by the Union that, the Authority has changed its policy and instead of transferring unclaimed light cargo goods lying in garage for 10 days to the Warehouse for further handling since November, 2002, the unclaimed goods are kept in the light cargo Shed itself for an unlimited period and instead of assigning the work of light cargo handling to the loaders already employed by the Authority it has temporarily contracted out the work of 30 day's contract to one M/s. Omega Enterprises and 120 contract workmen have been employed to carry out these duties of permanent nature. On the other hand 20 permanent workmen and 20 concerned workmen have been deliberately deprived of their work through these illegal, arbitrary and unjustified changes in the service conditions and this has been done with malafide intentions to defeat their claim for permanency. The nature of duties carried out by concerned workmen is essential and the work of loading and unloading carried out by these workmen is an integral part of the day to day activities of the Authority. Authority provides Trolleys and such other equipments which are required for carrying out the duties by the concerned workmen, their attendance is marked by the Authority and the muster-rolls, which are printed in the name of 'Air Port Authority of India' are in the possession of the Authority. It is also submitted by the Union that Assistant Cargo Manager Shri Chhada of the Authority supervise the work and control the concerned workmen and in the matter of leave or leaving early they report to the said Assistant Cargo Manager Shri Chhada. Authority also issues entry passes to the said concerned workmen which are valid for one year. From November, 1999 Authority has been deducting the provident fund contributions of the concerned workmen under the heading "C.P.F." and there is no contractor at all in respect of loading and unloading activities carried out by the 20 workmen concerned in the present reference. It is further submitted by the Union that, there are permanent workmen employed by the Authority for doing the same, similar and identical work and they are getting much higher wages under various settlements. The Wages, allowances and other terms and conditions of the permanent workmen are revised periodically and they are getting all the statutory benefits such as bonus, H.R.A., P.F., leave facilities, revision in wages etc. as well as basic wages, V.D.A., C.C.A. and so many other allowances. The permanent workmen are also doing the work of loading and unloading like the 20 workmen concerned in the present reference. They are getting wages 5/6 times more than the present set

of workmen. Whereas concerned workmen are getting wages at the rate of Rs.132.20 per day and in case of absenteeism their wages are deducted and even amongst the concerned workmen senior most workman Shri Ashok Satam who is working for last more than 17 years and the Junior workman Shri M. B. Patne who is working since last around 12 years both of them are getting wages at the rate of Rs. 132.20 per day. It is further submitted by the Union that, the services of the concerned workmen are essential and continuing nature has been accepted and admitted by the Dy. General Manager (Cargo) in his letter dated 20th February, 1998. In the said letter it is inter alia stated, "In short, these contract labours are providing much needed services in coping up with the increased cargo operations." It is submitted by the Union that, Authority maintains records in respect of employment of the concerned workmen including payment vouchers, office notes, fax messages of Assistant Cargo Manager, etc. etc. Such records clearly reflect that the concerned 20 workmen are doing the work of permanent, regular and perennial nature as the loaders in Cargo Handling and there is no difference at all between their work and the work of the permanent workman as far as the present set of 20 workmen are concerned who are employed as Loaders and are called as departmental loaders. There is no contractor and the concerned workmen are directly working as Loaders under the 'departmental loaders' and they are entitled to the benefits of permanency from the date they completed continuous employment of 240 days and the action of the Authority in not giving the status, benefits and privileges of permanent workmen to the concerned workmen i.e. Departmental loaders clearly amount to unfair labour practices under Item 9, 10 and 13 of Fifth Schedule, read with Section 2(ra) of the Industrial Disputes Act, 1947.

4. It is further submitted by the Union that the, concerned workmen are entitled to the relief of permanency and other consequential reliefs and also Award Order removing discrimination between them and the other permanent workmen since the concerned workmen have been working under the management, supervision and control of the management of the Authority, performing same, similar and identical duties like permanent loaders employed by the Authority, instructions regarding mode, method and manner of doing the work are given by the officials/Managers of the Authority and there is no intermediate contractor between the concerned workmen and the Authority, the working of loading and unloading done by the concerned workmen is an integral part of the regular and day to day activities of the 1st Party Authority. Hence, they are entitled to the above benefits from the day on which each one of them has completed continuous service of more than 240 days in the employment of the Authority and they are performing their duties on the premises of the Authority. It is therefore submitted by the Union that based on the provisions of Article 39 of the Constitution of India, as well as based on the doctrine of 'equal pay for equal work' the workmen concerned are

entitled to receive any of the benefits, privileges, advantages and other items and conditions of employment, at par with the permanent workmen working with the Authority, 1st Party, employer. It is further submitted by the Union that, the mandatory provisions of Industrial Employment (Standing Orders) Act, 1946 defines the term 'employer' under Section 2(d) as also it provides for permanency of workmen under Standing Order Nos.4(B) as also it provides for permanency of workmen under Standing Order Nos.4(B) and 4(C) of the Model Standing Orders. Authority is legally bound to maintain the registers including seniority register, seniority list of workmen, working under them etc. but the Authority has not maintained such records in respect of the concerned workmen and has failed to give the said benefits to the concerned workmen/departmental loaders at par with the permanent workmen. This discrimination is unreasonable, improper and arbitrary and violates Article 14 and 16 of the Constitution of India. There is total exploitation of these workmen and step-motherly treatment is given to these concerned workmen. It is also submitted by the Union that, there is no intelligible differentia between two sets of workmen viz. 20 departmental loaders and the other permanent loaders employed by the Authority, hence this discrimination requires to be removed from the date it has been effected since they are entitled to get all the consequential benefits of wages, allowances, etc. at par with the permanent loaders employed by the Authority and the concerned workmen are entitled to get the declaration that they are the permanent workmen of the Authority. It is also submitted by the Union that, though Provident Fund contributions are being deducted from their wages but no slips and/or statement etc is given to these 20 concerned workmen. It is also submitted by the Union that, till December, 1992 one M/s. Jack Enterprises was the so-called contractor but from 1-1-1993 the concerned workmen have been departmentalized. It is further submitted by the Union that, the quantum of work done by the concerned loaders at Cargo Complex and import warehouse has been constantly increasing over the years but the number of workmen has remained the same.

5. In relation to other concerned workmen, 9 workmen have been employed for the work of operation and maintenance of Baggage Conveyor System at Terminal IA at Santacruz, whose details have been given at Annexure I. These concerned workmen perform the duties of attending break down of conveyor belt; doing electrical maintenance of conveyor belt, doing mechanical maintenance of conveyor belt, attending panel board, cleaning and oiling the conveyor belt, removing and fitting Gear Box, checking/repairing/maintaining weighing scales and doing over all maintenance work of conveyor belt including over oiling thereof at terminal IA. The designations of these workmen are Mechanics, Electricians and Helpers/Khalasi and they are working there continuously for last so many years. The Junior Engineer and the Manager Engineering supervise

and control the activities of the concerned workmen. All the tools/equipments such as rings sets, spanners, grease guns, Wires, bulbs, welding machines, conductor, relay panels, etc. are provided by the Management of the Authority. Authority has introduced as intermediate contractors viz. M/s. Gannon Dunkerley & Co., More Marketing Pvt. Ltd., and now M/s. Delite. The details of numbers of conveyor Belts at each terminal and the number of contract/permanent workmen employed there are viz. at Terminal IA there are 6 Belts where 9 contract workers are employed to carry out the work (in 3 eight hours shifts), at Terminal IB there are 8 Belts and 8 permanent workers are employed there to carry out this work (in 3 eight hours shifts), at Terminal II there are 16 Belts where 42 permanent workmen are employed to carry out this work (in 3 eight hours shifts), at and Phase II of Terminal II. These concerned workmen work in three shifts and even some times are required to perform these duties beyond their normal duty hours but they are not paid any over time wages for the same.

6. Union further submits that there exists direct employer/employee relationship between the 1st Party, Authority and the concerned workmen since the day-to-day instructions regarding mode and manner of work are given by the officials of the Authority, the premises on which the said work is carried out belong to the Authority, the tools, apparatus and equipments are provided to the concerned workmen by the Authority, permanent workmen employed by the Authority are performing the same, similar and identical duties alongwith the concerned workmen and there is no difference of whatsoever nature in their duties and the concerned workmen work in 3 shifts without any break, the work in respect of maintenance and operation of Baggage Conveyor System of Terminal IA at Santacruz is of permanent, regular, perennial nature and of vital importance, the so-called contractors are mere name-lenders and they are never present on the premises where these activities are carried out by the concerned workmen. During February, 2000 to November, 2000 the 9 concerned workmen worked without there being any intermediate contractor. Their muster-roll was certified and signed by Junior Engineer one Shri Bannerjee, with Manager (Engineering) Shri J.P. Singh for the said period and they were paid directly during the said period and the muster rolls were carrying the name of "IAD" i.e. (International Airports Division) and that they are even issued passed for the Authority which are valid for one year.

7. In respect of the other set of concerned workmen it is submitted by the Union that, so far the concerned workmen employed by the Authority at Terminal IIB, there are 12 such workmen who are designated as wiremen, mechanics and Khalasi whose details have been given in Annexure I to the Statement of Claim. These 12 concerned workmen employed at Terminal II-B perform the same, similar and identical duties like aforesaid 9 workmen, except that

these 12 concerned workmen are performing their duties at Terminal II B whereas 9 concerned workmen are performing their duties at Terminal IA. It is submitted by the Union that, prior to November, 1994 these 12 workmen were employed through intermediate contractor by name De Engineering. However, from 1-11-1994 they have been departmentalized in Authority. Their designations have been as Wireman EMD-I, Mechanic EMD- I, Khalasi EMD-I, Wireman EMD-II, Mechanic EMD-II, Khalasi EMD- II etc. and these workmen are continuously working departmentally for last more than 8 years or so under direct supervision, control and management of officials of the Authority and are performing same, similar and identical duties like other permanent workmen working with the Authority. Union further submitted that, at Terminal IA, in respect of Conveyor Belt activities there are no permanent workmen and entire work is done by the said 9 concerned workmen without getting the benefits of permanency and at Terminal II-B EMD-II (Conveyor Section) there are 39 permanent workmen. Union further submitted that, since there is no difference of whatsoever nature between the duties carried out by the permanent workmen and the so-called contract labours, there is no justification or any rational reason for treating the 9 concerned workmen as contract labours especially when for last so many years they are working directly as departmental workmen and the entire action of the Authority refusing to give the status, benefits and privileges of permanent workmen to the concerned workmen, is nothing but a subterfuge and a camouflage. Union further submitted that, the introduction of intermediate contractors resorted to by the Authority by way of some paper arrangement between the Authority and the so called contractors is/was nothing but sham and bogus arrangement and it is a camouflage to deprive the concerned workmen and the workmen involved in Writ Petition No.279 of 2000 of their entitlement for the benefits available to the permanent workmen of the Authority. It is also submitted by the Union that, the impugned action of Authority not treating them as its employees is totally unjust, illegal, malafide and arbitrary and the so called contracts which were purportedly entered into by the Authority with the so-called mere name-lenders, are sham, bogus contracts, since the premises on which the concerned workmen work belong to the Authority, rates of wages of the concerned workmen are determined by the Authority, the method and manner in which the work is to be carried out by the concerned workmen are decided by the Authority. The over all day-to-day supervision, control and administration/management is that of the officials of the Authority. The regular documentation i.e. log book, duty roaster, office notes, muster rolls, payment registers, entry passes etc. are prepared and maintained and signed by the officials/managers of the Authority. The concerned workmen have been in the continuous employment of the Authority for several years, without any break and in each of the calendar year each one of them has completed

continuous service of more than 240 days. The concerned workmen are performing the same, similar and identical duties like permanent workmen, and the work of the concerned workmen as well as permanent workmen is supervised and controlled by the very same officials of the Authority, that the arrangement arrived at by the Authority before departmentalization of the concerned workmen was mere paper arrangement with malafied intentions to deprive the concerned workmen of their rightful wages, claims, benefits of permanency which the concerned workmen are entitled to receive based on various labour legislations e.g. Provident Fund and Misc. Provisions Act, 1952, E.S.I. Act, Payment of Bonus Act and Industrial Employment (Standing Orders) Act, 1946 and the said paper arrangement is against the provisions of Section 23 and 27 of the Indian Contract Act. which is nothing but sham and bogus arrangement. By doing that, the concerned workmen have been victimized and cheated. the concerned workmen were entitled at least to the wages and allowances which are paid by the Authority to its permanent workmen at the lowest level, in view of Regulation 25 of the Contract Labour (Abolition & Regulation) Act. The concerned workmen are not even paid bare minimum wages; concerned workmen are denied the benefits of various "Settlements/Agreements which are signed by the Authority and which are applicable to the permanent workmen only; the substantial part of the responsibility of the Airport Managerial Personnel is the supervision and control of the work being performed by the so-called contract workers and the Operation Department has issued Job Description (Duties and Responsibilities of the Airport Managers) which include to keep a record of the shift personnel on duty, their attendance and leave record, inspect the terminal building for cleanliness and check all passenger amenities like lounge furnitures, toilets, drinking water facilities, P. A. System, CCTV, Flight Information Boards (Display slip flat type), lift escalator, conveyor belts etc. to ensure that they are available and functioning in a complaint-free manner, ensure maintenance of the area in the immediate vicinity of the terminal building to ensure that they are kept clean and there is no likelihood of congestion anywhere at any time, ensure that there is no water logging on the city sight and airside of technical building, reserved lounges are maintained well and allotted to entitled persons only, to supervise and control the working of all staff of TAAI on the shift duty (including Civil and Electrical Departments) in coordination with AE/JE, to attend the complaints and suggestions by public and maintain a complaint book. Whenever there have been so-called contracts between the name-lender contractors and Authority such contracts have always been stereo-type contracts which are mere paper arrangements and, in fact and in practice, full and complete control is vested in the Authority; that when the Authority realized that the present set of workmen are, in fact, their workmen and have been departmentalized it, therefore, in the year 2000 and 2001 the Authority called

for details regarding employment of all the concerned 41 workmen and these workmen were asked to furnish details regarding their dates of birth, qualification, date of departmentalization etc. and their last photograph and the same were furnished by the concerned workmen. However inspite thereof these workmen have not been made permanent, the material, tools and apparatus required by the concerned workmen for carrying out their day to day work are provided by the Authority, the duties performed by the concerned workmen are in respect of permanent, regular and perennial activities of the Authority and it is an integral part of their regular activities; 1st Party being Authority under Article 12 of the Constitution of India, discriminatory treatment meted out to the concerned workmen by them under the guise of employing these workmen earlier through the so-called contracts and now departmentally (without giving them any benefits of permanent workmen) is uncalled for, unwarranted and unjustified; in view of the Directive Principles of State Policy under the Constitution of India, the responsibility is cast on the Authority not to indulge in discrimination and to give fair service conditions and fair wages to all the workmen employed under it. Without any discrimination; there is absolutely no reason whatsoever for the Authority to make any discrimination between the two sets of workmen i.e. 41 concerned workmen and the permanent workmen and to continue the same indefinitely; such discrimination amount to unfair labour practices under Item 10 of Fifth Schedule read with Section 2 (ra) of the Industrial Disputes Act, 1947; the concerned workmen have worked for last several years without any break and without any interruption hence they are entitled to the benefits of permanency with consequential benefits and deprival of the same by the Authority is unconstitutional; upon lifting of the veil it can be seen that there is direct employer/employee relationship between the Authority and the concerned workmen and wherever there were intermediate so-called contractors they were mere name lenders or agents and such contractors were never the employers of the concerned workmen; the engagement of the workmen on large scale under the label of contract labours is victimization of the concerned workmen and it is nothing but their exploitation which is resorted to with mala fide intentions by the Authority with a view to deprive these workmen of fair conditions of employment and with the ulterior motive of denying them the status, benefits and privileges of permanent workmen; permanent workmen employed by the Authority are getting dearness allowance, other allowances, basic pay, revision in wages etc. periodically and in contrast the concerned workmen are getting meager wages the said disparity is unexplainable, unreasonable, unwarranted and uncalled for and the same requires to be removed from the date/day it has been practiced; the so-called contractors who were introduced by the Authority were not registered contractors and did not have valid and proper licences for recruitments and engagements of contract labours and the same were

deliberately withdrawn by the Authority itself and the concerned workmen have been departmentalized and all the concerned workmen are having necessary skills, experience, qualification, etc. to perform their respective duties and have been performing their duties sincerely, honestly and to the best satisfaction of the Authority.

8. It is further submitted by the Union that, all the concerned workmen i.e. 20 loaders working at Cargo Complex and Import Warehouse, 9 workmen at Terminal I-A and 12 workmen at Terminal II-B have been deprived of all the benefits under the mandatory provisions all these years and the disparity practiced by the Authority against these concerned workmen has caused irreparable damage and harm to the interests of the poor workmen and they have been exploited by the Authority for all these years. It is submitted that the disparity and discrimination between these 41 workmen on the one hand and the permanent employees/workmen employed by the Authority on the other hand requires to be removed from the date it has been started and all the concerned workmen are entitled to the benefits of permanency and other consequential benefits with 18% compound, from the date/day each one of them has completed 240 days continuous employment with the Authority. It is also submitted by the Union that in view of the orders dated 16th December, 2002 passed by the Division Bench of the Hon'ble High Court in Writ Petition No. 279 of 2000 protection granted to the concerned workmen be continued since the same will not prejudice the Authority in any manner whatsoever.

9. Union, therefore, prayed to hold and declare that the contract between the Authority and the respective contractors are sham, bogus and camouflage to deprive the concerned workmen to the benefits available to the permanent workmen employed by the Authority; to hold and declare that, the concerned workmen are direct employees of the Authority, to direct the Authority to give status, benefits and privileges of permanent workmen, to all the concerned workmen from the date/day each one of them has completed continuous service of 240 days, at par with the permanent workmen and to pay them the arrears arising therefrom with 18% compound interest; direct the Authority to pay wages and consequential benefits to all the concerned workmen at the same rates as applicable to their permanent workmen and also to pay the consequential arrears to these workmen with 18% compound interest thereon; to direct the 1st Party to give equal pay for equal work to the concerned workmen and also prayed for interim and ad-interim reliefs in terms of their above prayers during the pendency of the present reference..

10. This is disputed by the 1st Party by filing Written Statement at Exhibit M 1/8 making out the case that, Reference in the present form is manifestly erroneous and without jurisdiction and as such liable to be quashed since the Government of India, Ministry of Labour has made a Reference to this Tribunal for adjudication reciting in the

order of reference that, the Central Government was of the opinion that an industrial dispute existed between the employers, 1st Party, in relation to the Management of Airport Authority of India and their workmen, the 2nd Party, in respect of the matters specified in the schedule annexed therewith. It is further recited therein that, the Hon'ble High Court of Judicature at Mumbai on Writ Petition No.279 of 2000 directed the Government for Reference of the abovesaid industrial dispute for adjudication. It is therefore, submitted by the 1st Party that the order of reference was made only at the directions of the Hon'ble High Court of Bombay and not in exercise of the powers conferred on the appropriate Government to refer the industrial dispute originated from the provisions of Section 10(1) of the Industrial Disputes Act, 1947. The said power has to be exercised by the appropriate Government, only when it is satisfied on the basis of the material on record, forming an opinion, that, the industrial dispute existed or apprehended before the order of reference is made for adjudication. The appropriate Government has to form an opinion as to the factual existence of industrial dispute. As a preliminary step to discharge of its functions in this regard. It is also contended that, the satisfaction of the existence of the industrial dispute is a condition precedent; before making the order of reference, the reference that has been made by the Central Government at the direction of the Bombay High Court issued in the Writ Petition No.279 of 2000; without forming an independent opinion by it in respect of the existence of the industrial dispute, as required under Section 10(1) of the Industrial Disputes Act, 1947. It is also contended by the 1st Party that, the so called industrial dispute was raised by the 2nd Party for the first time before the Hon'ble High Court under Article 226 of the Constitution of India and there was no any demand raised against the Management at any point of time before any authority. There was no any conciliation proceedings initiated as required under Section 12 of the Industrial Disputes Act, 1947. It is contended that, the Central Government had no any material before it to satisfy that the industrial dispute existed between the parties to exercise its power under Section 10(1) of the Industrial Disputes Act, 1947. The discretion of Government to make the order of reference is dependent on its satisfaction. The opinion formed by the Government of India on the basis of the directions issued by the High Court was not conclusive: as the same was not the opinion of Central Government, as contemplated under Section 10(1) of the Industrial Disputes Act, 1947 and that, there was no material before the Central Government for coming to the conclusion that, the industrial dispute existed, which is a condition precedent in forming of the opinion and it has acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947, hereinafter referred to as 'the said Act', without application of its mind and to form the necessary opinion in respect of the existence of the industrial dispute; as required under Section 10(1) of the Act and hence the said

order of reference is manifestly erroneous and without jurisdiction and as such liable to be quashed. It is also contended by the Authority that, the order of reference dated 7-3-2003 was made at the directions of the Bombay High Court in Writ Petition No.279 of 2000 by the Government of India, Ministry of Labour, New Delhi at the behest of the Union, which does not operate at the shop floor, as its workmen are not their members. The said Union has no any operation, hence, has no locus standi so far as the order of reference is concerned. It is also contended by the 1st Party that, the reference is bad for non-joinder of the necessary parties and that the same be rejected on the said ground alone since the Union has time and again referred to the contractors engaged by the Authority, 1st Party from time to time attributing different kind of adjectives to them but they have not been impleaded as parties in the reference though some of the Contractors were impleaded in the Writ Petition Nos. 1494 of 88,2641 of 1992, 1256 of 1996 and 279 of 2000, hence they were proper and necessary parties in this order of reference also. It is submitted by the Authority that due to non-joinder of the said parties, it may cause prejudice to the Authority as well as to them. It is also contended by the Authority, 1st Party that, the Union cannot represent the concerned Workmen as they are not the workmen of the 1st Party, Authority, and that the said workers neither can enroll themselves as the members of the Union nor Union can admit them as its members and the 2nd Party, Union is not meant for them and the 1st Party is not aware whether the said workers in fact have been the members of the 2nd Party, Union, since 1989 till today. 1st Party, Authority further submit that, the dispute must be between the employer on one side and his workmen on the other side. But the persons referred to in the order of reference cannot be the parties to the dispute, as they are not the 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, hence the order of reference is bad in law, as what is referred by the Government to this Court for adjudication is not an 'industrial dispute' within the meaning of Section 2(k) of the Act and the order of reference is liable to be rejected on this ground alone. It is also submitted by the Authority that, there is no privity of contract of employment between it and the concerned workmen since they are not 'workmen' as defined under Section 2(s) of the Industrial Disputes Act, 1947. It is contended by the 1st Party that, essential condition of a person being workman within the terms of the definition is that, he should be employed to do the work in that industry and that there should be an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee. Unless the person is so employed there cannot be question of his being a 'workman' within the definition of the term as contained in the Act. When the contract system is in vogue, the persons employed by the contractors are not the workmen of the 1st Party. It is further contended that, the industrial dispute

within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 must be between the employers and the workmen as defined under Section 2(s) of the said Act. Since the concerned workmen are not their workmen, as defined under Section 2(s) of the said Act they have no locus-standi to raise the industrial dispute under Section 2(k) of the said Act, through the Union. The workmen of the 1st Party may raise the dispute through their Union for their employment or non-employment or the terms of employment or with the conditions of labour, provided the workmen must have direct and substantial interest in their employment, non-employment, the terms of employment or with the conditions of labour. The definition of Section 2(k) of the said Act has to be read in the context of the subject-matter and the scheme of the said Act. The said Act is primarily meant for regulating the relations of the employers and their workmen as defined under Section 2(s) of the said Act. The said Act avowedly gives a restricted meaning to the word 'workman' and even excludes employees provided in Section 2(s)(iii) and (iv) of the Act. The said Act draws the distinction between the workmen as such and the managerial, supervisory and administrative staff. Thus, the Act is primarily meant for regulating the relations of the employers and their workmen and almost all the provisions of the Act are intended to confer benefits on the class of persons, who generally answer to the definition of the word 'workman' as defined under Section 2(s) of the said Act. It is further contended that, having regard to the scheme and the objects of the Act and its other provisions, the definition of Section 2(k) of the Act has to be read. The definition clause falls into three parts (i) there must be a dispute or difference (ii) the dispute or difference must be between the employer and their workmen as defined under Section 2(s) of the said Act, as the 1st Party is not concerned with rest of the parties i.e. employers and employees or workmen and workmen, (iii) the dispute or difference must be connected with the employment or non employment or the terms of employment or with the conditions of labour of any person. It is contended that the first two parts obviously do not apply to the facts of the case as there cannot be a real or substantial dispute between the 1st Party and the persons covered in Writ Petition No.279 of 2000, concerned workmen. The third part of the said definition may relate to any of two matters i.e. (i) employment or non-employment and (ii) terms of employment or conditions of labour of any person. So far as the third part of the definition is concerned, the workmen of the Authority through their Union may espouse their cause; provided they must have direct and substantial interest in them. In the absence of such interest among the employees of the 1st party, the dispute cannot be said to be real dispute between the parties. Whereas the workmen of the company raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour, the dispute is raised, need not be a workman within the meaning of Section 2(s)

of the Act, but must be one in whose employment, non-employment, terms of employment or conditions of labour, the workman as a class must have direct and substantial interest, which did not exit when the alleged industrial dispute was espoused by the Union. 1st Party further submitted that, when the validity of the reference made under Section 2(k) of the said Act is challenged it has to be established by the 2nd Party, Union that, the industrial dispute espoused by it had the support of a substantial section of the workmen employed in the establishment. It must, therefore, show that, the substantial number of such workmen employed in the establishment participated in or acted together and arrived at an understanding either by a resolution or by any other means and collectively supported the said industrial dispute. It submitted that, no such exercise was made before espousing the cause of the concerned workmen, hence the said Reference is bad in law. 1st Party, therefore, prayed that the reference be rejected.

(11) It is further contended by the Authority that, the 2nd Party, Union filed Writ Petition No.279 of 2000 covering the concerned workmen praying for orders (a) direct the Respondent No.1 (i.e. Authority) to forthwith discontinue the contract awarded to the Respondent No.5 (i.e. the contractor) and to absorb the contract labourers listed at the exhibit as direct and permanent employees, (ii) to direct the Respondent No.1 to pay and extend to the said contract labourers with retrospective effect full wages and benefits extended to its permanent and direct employees; doing identical work (iii) to restrain the Respondent Nos.1, 4 and 5 (i.e. the Authority, the Regional Labour Commissioner (C) and the contractor respectively) from terminating services of the said contract labourers (iv) to grant ad-interim and interim reliefs in terms of prayers (i) to (iii) and the order dated 2-2-2001 was passed by the Hon'ble High Court in terms of prayer (iii) only. It is further contended by the Authority that, there was no any prayer in any of the said Writ Petitions filed by the Union, 2nd Party, in the Hon'ble High Court to declare that the contract was sham and bogus and was a camouflage to deprive the contract labourers concerned; in the said petition, of benefits available to its permanent workmen. The allegations made in this regard by the Union in the statement of claim are nothing but an after-thought and are made to fine tune with the terms of reference made by the Government of India, Ministry of Labour, pursuant to the directions issued by the Hon'ble High Court of Bombay in its order dated 16-12-2002 in Writ Petition No.279 of 2000. It is also submitted that the Hon'ble High Court while passing the order at clause (i) of paragraph 4(1) of the said order was influenced by the order passed by the High Court in Writ Petition No.917 of 1995 and others and the observations made by the Supreme Court in *Steel Authority of India Ltd. and ors. vs National Union Water Front Workers and others* 2001 AIR SCW p.3574 = 2001 111 CLR p.349 without having

any reference in the pleadings of the Union in this regard in Writ Petition. It is further submitted by the Authority that, the order dated 11-4-1997 was passed by the Hon'ble Supreme Court of India in Special Leave Petition (c) Nos.4088-4093 of 1997 arising from the Judgment of Bombay High Court passed on 27-3-1996 in Writ Petition Nos. 1494 of 1989, 2641 of 1992 and 1256 of 1996 directing the Central Advisory Contract Labour Board (hereinafter referred to as the 'Board') to examine the matters and then give necessary advice to the Government of India for taking appropriate action under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the "Contract Labour Act"). It is further submitted that accordingly the Union applied to the Government of India and the Board for investigation of the said matter in accordance with the law. After hearing the parties Government of India, Ministry of Labour, New Delhi, issued a Notification dated 16-11-1999 prohibiting the employment of contract labour, inter alia, in Cargo handling and conveyor system. The Union therefore filed a Writ Petition which was numbered as Writ Petition No. 279 of 2000 praying for various reliefs including absorption of the contract labourers as. The Hon'ble High Court, however, by its order dated 16-12-2002 directed the respondents to abide by the interim reliefs granted by it, if any and further directed the Government of India to make a reference of the demands specified therein to the Industrial Tribunal for adjudication and accordingly the order of present reference was made. 1st Party further submitted that, the industrial dispute can be raised by the Union, only on issuance of prohibition notification under Section 10(1) of the Central Labour Act; prohibiting employment of contract labour or otherwise; as held by the Apex Court in the case of Steel Authority of India. There was, however, decision of the Government of India to prohibit employment of the contract labour in the said works. 1st Party submits that, Authority was aggrieved by a part it hence the Authority filed a Writ Petition being Civil Writ Petition No. 6540 of 1999, the Hon'ble High Court, Delhi by its order dated 22-11-2001 quashed the impugned Notification dated 16-11-1999 issued by Central Government. It is further contended by the 1st party that, Air Port Employees Federation of India (AEFI), Kerala, filed a Letters Patent Appeal in the Hon'ble High Court of Delhi against the said judgment and order dated 22-11-2001 against the order of the Single Judge which was numbered as LPA No.530 of 2002 in CPW No.6540 of 1999 and by order dated 24-7-2002 the Division Bench dismissed the appeal observing that there were no merits in it. 1st Party submitted that, Mr. Sivaraman and another filed a Special Leave Petition (No. CC 956 of 2003) in the Apex Court against the said judgement and order dated 24-7-2002 which was dismissed by Apex Court vide its order dated 31-1-2003. It is, therefore, contended by the 1st Party that it is not for the Hon'ble Court to enquire into the question and decide whether the employment of contract labourers in any process, operation or other work in any

establishment should be abolished or not. It is the matter for the decision by the Government, after considering the matter under Section 10 of the Contract Labour Act, which was done by the Government of India as averred hereinabove. It is, therefore, further contended by the 1st party that, this Tribunal has no authority or jurisdiction to adjudicate the issue whether the contract between it and the contractor's was sham and bogus and was a camouflage to deprive the workers concerned in the petition, of benefits available to its permanent workmen since this Tribunal has no jurisdiction or authority to adjudicate the said issue and the other issues which are incidental also cannot be adjudicated, hence it prayed that the order of Reference dated 20-3-2003 be rejected on this ground.

(12) It is contended by the 1st Party, Authority, that, the preliminary issues raised by it go to the root of the matter and relate to the jurisdiction of the Government of India, Ministry of Labour, New Delhi to make the order of reference dated 7-3-2003 to this Tribunal and its jurisdiction to adjudicate the Reference on merits.

(13) 1st Party without prejudice to its aforesaid contentions and preliminary objections in reply to the Statement of Claims submitted that, by virtue of the order of reference dated 7-3-2003, the alleged industrial dispute has been referred for adjudication of this Tribunal concerning contract labourers in Writ Petition No. 279 of 2000 who worked under different Contractors from time to time. Hence, the allegations that the industrial dispute concerning 41 workmen employed by the Authority had been referred for adjudication to this Tribunal by the Central Government are not correct. It is further contended by the 1st Party that the Union cannot represent the said persons as they are not the workmen of the 1st Party and that, neither the said persons can enroll themselves as the members of the Union nor the Union can admit them as its members and the Union is not meant for them and the Authority is not aware as to whether the said persons in Labour, did not act independently in forming an opinion, as required under Section 10 of the Industrial Disputes Act, 1947 that the industrial dispute existed for being referred to this Tribunal for adjudication since it made the reference at the direction given by the Hon'ble High Court in its order dated 16-12-2002 in Writ Petition No. 279 of 2000. The wordings of the schedule to the order of reference dated 7-3-2003 as well as of those in the order dated 16-12-2002 passed by the Hon'ble High Court in Writ Petition No. 279 of 2000 are the same. The discretion of Government to make the order of reference is dependent on its satisfaction that the industrial dispute either exists or apprehended. The opinion formed by the Government of India on the basis of the directions passed by the High Court was not conclusive. The alleged industrial dispute was raised by the Union for the first time before the

Hon'ble High Court of Bombay under Article 226 of the Constitution of India in the year 1989. 1st party submitted that, the Central Government had acted in clear contravention of the provision of Section 10(1) of the Act and had taken the decision, only on the basis of directions of the Hon'ble Bombay High Court without having any material before it to apply its mind and form the necessary opinion in respect of the existence of the industrial dispute hence the said order of reference dated 7-3-2003 is manifestly erroneous and without jurisdiction and as such liable to be, rejected on this ground alone. 1st Party further contended that, there is no definition of "Traffic services" as averred by the 2nd Party but it is 'air traffic service' under Chapter-I of the Airports Authority of India Act, 1994. Chapter III deals with the functions of the 1st Party and not definition of the 1st Party as averred by the 2nd Party. There are two division of the 1st Party viz. (i) International Airports Division and (ii) National Airports Division. The International Airports Division manages 5 international airports, whereas National Airports Division manages 119 Airports across the country. The man-power required by it is consisting of permanent, temporary and contractual. Though the order of reference dated 7-3-2003 did not specify the number of persons covered in the order of reference, it has given a reference to the persons concerned in the said Writ Petition. The Union has annexed and marked as Annexure-I, showing therein the list of persons deployed at Cargo Complex and Import Warehouse. 1st Party submitted that since the concerned workmen were appointed by the Contractors details it is not aware about their date of joining, date of birth and joining of service. They are not departmental since 1-1-1999. It is submitted by the Authority that 18 contract loaders are deployed at Import Warehouse and air cargo complex; 9 contract labourers are deployed for carriage conveyor system at Terminal I-A and 12 contract labourers are deployed at different sections of Terminal 2. It is denied by the Authority that the workmen concerned in the present reference i.e. 20+9+ 12 were working respectively in the cargo complex & import Ware-House, Conveyor Belt and Electrical Maintenance and that out of those workmen, 20 workmen (i.e. loaders) doing the work of loading and unloading of cargo were called as casual loaders and that the remaining workmen of which the first nine are employed as conveyor belt operation and maintenance workers at Terminal I-A and rest 12 were employed at Terminal 2B and they were doing the work in connection with electrical maintenance Division I & II. Mr. Laxman Ganu Mohite is dead hence his name should not have been shown. It is submitted that, by virtue of order dated 16-12-2002 passed by the Hon'ble High Court in Writ Petition No.279 of 2000 the concerned people are getting protection from being terminated from service and hence they are being continued in services on or from 1-1-1993. The work which the said persons are carrying out is not connected with the main function of the Authority. The allegations, therefore, made

that, the work which all the concerned workmen were carrying out was the work which all the concerned workmen were carrying out was the work pertaining to the integral part of the regular activities of the 1st Party, Authority, and that, the duties carried out by the concerned workmen were of such nature that the same had never been severable from the main activities carried out by the Authority at various Airports in India including Mumbai. Authority further submitted that, there is no continuous and constant flow of passengers and cargo. The duties carried out by them are not essential but incidental to cargo handling activities. It is therefore denied that the services rendered by the concerned workmen, irrespective of their categories, were of most important nature because of the continuous and constant flow of passengers and cargo and apart from that, there is no nexus between them. The Authority submits that, the concerned persons carry out their routine work and do not come in contact with the international passengers and thus have no any interaction with them and hence the allegations made that as far as international passengers were concerned the nature of duties entrusted to all the workmen, including the concerned workmen was of a vital importance are not true. It is submitted by the Authority that, all the departments are not equally important, some are more important than the others; considering the nature of activities carried on by them. The man power required by it consists of permanent, temporary and contractual only. The activities of the Authority were/are enumerated in The International Airports Authority Act, 1971 and the Airports Authority of India Act, 1994 and the same are integrated.

(14) In reply to paragraph 6 of the statement of Claim, Authority contended that the litigation has on between it and the Union since 1989. It is submitted by the Authority that, the averments made in Sr.Nos.1 and 2 of it are substantially true. As regards Sr.No.3 it is submitted by the Authority that, it is not aware whether the Union of India did not take any action on the directions of the Hon'ble Bombay High Court for referring the matter to the Central Advisory Contract Labour. As regards Sr.No.4, the Authority submits that, it is a matter of record and hence no averments are require. As regards Sr.No.5 it submitted that the averments made therein are substantially true. As regards Sr.No.6, the Authority submits that it is not aware of the facts averred therein. As regards Sr.No.7 it submitted the averments made therein are substantially true. As regards Sr.No.8 and 9 it submitted that it is a matter of record, hence no averments, as regards Sr.No.10 the Authority submits that, it is not aware of the facts averred therein. As regards Sr.No.11 it submitted that, the averments made therein are substantially true except in respect of the date of notification which is dated 2-3-1993 and not 14-1-1993. As regards Sr.No.13 it submitted that, it is a matter of record, hence no averments are required. As regards Sr. No.13 it submitted that, the Notice of Motion

was filed but the same was not dismissed on 17-7-1994. As regards Sr. No.14, the Authority submits that, the said Notice of Motion was dismissed by the Hon'ble High Court of Bombay and against the said order the Special Leave Petition was preferred which was dismissed by Supreme Court on a ground that, it was the inter-locutory order and directed the High Court to decide the petition within two months. As regards Sr.No.15 it submitted that, the conveyor system at Terminal-2 is being maintained by its permanent workmen and rest of the averments are a matter of record, hence no averments are required. As regards Sr.No.16 it submitted the averments made therein are vague and hence no comments. As regards Sr.No.17 it submitted that, the notification dated 2-3-1993 and not dated 14-1-1993 was issued by the Central Government which was quashed by the Hon'ble High Court and it is a matter of record, hence no averments are required. As regards Sr.No.18 it submits that, the averments made therein are vague and hence no averment is made. As regards Sr.No.19 it submits that, it is not aware of the averments made therein and hence no comments are made. As regards Sr.No.20, the Authority submits that, it is a matter of record, hence no comments are required. As regards Sr.No.21 and 22 it submits that the averments made therein are substantially true. As regards Sr.No.23 it submits that, there was no circular dated 6-2-1998 issued by it, the circular was issued to filling some posts from, the departmental candidates and there was no question of re-musteration of the permanent workmen in the posts of contract labourers and there was another circular dated 5-2-1998 for re-musteration of the departmental candidates in some posts but the same was not in respect of the contract labourers. As regards Sr.No.24 it submits that the averments made therein are substantially true. As regards Sr.No.25 it submitted that, it is a matter of record and hence no averments are required. As regards Sr.No.26 it submitted that, it is not aware of the averments made therein. As regards Sr. No. 27 it submits that it is a matter of record, hence no averments are made. As regards Sr. Nos. 28 and 29 it contended that, it is not aware of the averments made therein and as regards Sr.No.30 it submitted that, the averments made therein are substantially true and it submitted that the Union has not averred the subsequent developments that took place from time to time.

15. Authority submitted that, Ministry of Labour, Government of India, New Delhi issued the notification dated 16-11-1999 under Section 10 of the Contract Labour Act abolishing the contract labour system inter-alia in the jobs of cargo handling and conveyor systems and the Authority being aggrieved by the said notification filed a Writ Petition before Hon'ble Delhi High Court at Delhi being Civil Writ Petition No. 6540 of 1999. After hearing all the parties Hon'ble High Court of Delhi by its order dated 22-11-2001 quashed the impugned Notification dated 16-11-1999 issued by the Central Government in view of the subsequent

decision of the Supreme Court in Steel Authority of India (Supra). It submits that, Airport Employees Federation of India (AEFI) Kerala filed a Letters Patent Appeal in the High Court of Delhi against the said judgment and order dated 22-11-2001 which was numbered as L.P.A. No.530 of 2002 in CWP No.6540 of 1999 and the Division Bench of the Hon'ble High Court of Delhi passed the order dated 24-7-2002 observing that, they were of the opinion that, the judgment and order passed by the Ld. Single Judge could not be faulted with and dismissed the appeal as there was no merits. Then one Mr. S. Sivaraman and another filed a Special Leave Petition (No.CC 956 of 2003) against the said judgment and the order dated 24-7-2002 in LPA No.530 of 2002 which was dismissed by the Hon'ble Supreme Court of India by its order dated 31-1-2003. Authority submitted that in the meantime Union filed a Writ Petition No.279 of 2000 against it and the contractor; which was finally decided on 16-12-2002, leading to the impugned order of reference dated 7-3-2003 made by the Government of India. It submitted that, the judgement passed by the Hon'ble Supreme Court of India in Steel Authority of India Ltd. vs National Union Water Front Workers and ors. reported in 2001 AIR SCW 3574 = 2001 III CLR page 349 and more specifically paragraph 122 of the said judgment, does not give any directions including directions to the Appropriate Government i.e. the Central Government for making reference in this case and that, the present reference has been made at the instance of the Hon'ble High Court of Bombay in the order dated 16-12-2002 passed in Writ Petition No.279 of 2000 which in fact need not be made. It is submitted by the Authority that, 10 persons are deployed at various areas of Cargo Complex and Import Warehouse and not 20 workers as alleged. It is also submitted by the Authority that, there was no any contract entered into with a contractor since 1-1-1993, as the contractors were not prepared to enter into the contracts. As they had no option to engage their own employees in view of the orders of the Hon'ble High Court protecting the services of the said persons pending the hearing and final disposal of the case, the said persons are called as 'contract loaders' and not 'departmental workmen' as alleged. The said persons are deployed at various areas of Cargo Complex and Import Warehouse and are being paid wages by the office w.e.f. 1-1-1993, after the expiry of the last contract, as per the directions of the Hon'ble High Court. It is submitted that, the Hon'ble High Court has clarified the position in its order dated 3-5-1991 in Notice of Motion No. 3404 of 1990 in Writ Petition No. 1494 of 1989, in paragraph 18, that, the mere fact that the workers were continued to be employed for the work carried out departmentally by the virtue of the said order, would not enable them to claim as of right that they had become direct employees of the Authority. The Authority further submitted that, in view of the order of the Hon'ble High Court of Bombay, granting protection to the contract labours from termination of their services, the new

contractor was not prepared to enter into contract with it and hence it was constrained to carry out the contractual work with them only and hence they are being paid wages by it with effect from 1-1-1993 and the allegations made by the Union that, though their dates of joining were prior to 1-1-1993, they were being paid wages departmentally with effect from 1-1-1993 in terms of the orders of the Hon'ble High Court of Bombay in Writ Petition No.1494 of 1998. It is submitted by the Authority that, Airports Authority of India Act, 1994 provides two independent divisions i.e. (i) International Airports Division (IAD) and (ii) National Airports Division (NAD) and that, the Cargo Complex at Mumbai Airport was commissioned on 13-5-1977 and the Authority was the custodian of all imported goods approved by customs till 3-11-2002 and it appointed Air India as their ground handling agents at Air Cargo Complex and thereby Air India is the custodian of the airlines handled by it and the Authority is the custodian of cargo of Airlines handled by it. All the imported goods were received by Air India from the carriers for warehousing with them. Ten days old uncleared heavy cargo was thereafter shifted to the cargo complex and uncleared light cargo was shifted to its import warehouse and all general air cargo weighing more than 100 kgs or less and lying uncleared for more than 14 days is being shifted to the cargo complex or the import warehouse belonging to it. It submitted that, Authority had employed 19 permanent workmen as loaders but there is no managerial, supervisory and clerical staff exclusively for loading, unloading and incidental operations of cargo loader and not 20 workers as loaders apart from managerial, supervisory and clerical staff as alleged by the Union. Authority also submitted that, the nature of work performed by 18 contract labourers differs from point to point with that of the permanent loaders and it was not the same. Authority submitted that, the question whether the contract labourers have been performing the same, similar and identical duties at par with the permanent workmen of the Authority and further whether the nature of work performed by both those sets of group was absolutely the same are the matters to be determined by the Deputy Chief Labour Commissioner (C) under the Central Rules and hence, this Tribunal has no jurisdiction to adjudicate the said aspects of the dispute. It is denied that, the concerned workmen to perform the same, similar and identical duties, side by side alongwith the permanent loaders and the nature of work performed by them was absolutely the same. Authority submitted that, it had appointed Air India as their ground handling agent for imported cargo, the operating airlines shift the said cargo to the warehouse of Air India (GHA) and the concerned parties and their agents clear the goods in accordance with the prescribed procedure laid down in this regard and the duties of forwarding the cargo and to give delivery to the claimants, is performed by the permanent loaders only. Authority is not concerned with the number of loaders appointed by Air India to carry out the job of loading and unloading of

cargo. It submits that, prior to 3-11-2002, the import light cargo not claimed by the party/agent from the said shed for more than 14 days was shifted by the Authority from Air India (GHA) to the Import Warehouse for further handling and the said work is carried out by the permanent workmen as well as by the concerned workmen. Authority further contended that, it appointed 19 permanent loaders, whereas there were 20 contract labourers, out of whom the contract labourers at Serial No.10 and 11 of Annexure I of the statement of claim have expired and thus, at present there are 18 contract loaders. The cargo is shifted through the departmental trucks under its double lock system as well as those of Customs Department. There is no specific number of man-power deployed to carry out the said shifting work and presently the cargo is shifted through the departmental trucks under its double lock system as well as those of customs and only 30 days old cargo is only shifted over there. It is, therefore, denied by those 41 loaders received the 10 days old cargo from Air India at the Import Warehouse, stacked them on racks according to location, forwarded the cargo and gave delivery to the claimants. It is submitted that, if the goods are not claimed within the time limit laid down in the Customs Act, 1962, which is 30 days, the goods are shifted by the loaders to another site and the same are processed before being auctioned. Authority further denied that, it commissioned appointment of 16 extra loaders in 1986 and that however, instead of appointing permanent loaders, the Authority appointed 26 contract workers to work alongwith the regular loaders in the operation. Authority submitted that, it took over the ground handling work of 22 airlines from Air India from 3-11-2002. The Authority submitted that, it has (i) import warehouse (ii) a heavy cargo shed and (iii) a light cargo shed in the Cargo Complex for ground handling cargo for the said 22 airlines and that, the work of import light cargo was earlier carried out by different cargo handling agencies besides Air India. Due to volume of work M/s. Omega Emega Enterprises, Mumbai has been entrusted to carry out the work of handling of import light cargo and part of it is handled by it. Hence, the allegations that, the work of import light cargo which was carried out by 120 permanent workmen/loaders of Air India was then being contracted out totally are not correct. It is not aware as to how many loaders have been employed by the said company to carry out the said work. It submitted that, due to administrative reasons it does not shift 10 days old light cargo to the warehouse and both sets of loaders have been redeployed to make optimum utilization of available work force, following rise of work load; due to handling of parallel cargo operation. They are utilized/deputed on exigencies of services of Cargo department e.g. when work at Import Warehouse reduced due to post PACT Operations, the loaders were redeployed at various locations at Air Cargo Complex; such as permanent loaders were deployed at U.B. Centre; whereas casual loaders were deployed at Export Shed and some of them were retained at Import Warehouse.

Thus redeployment of available work force was not done with mala fide intention. Authority submitted that there are only 19 permanent loaders employed by it and there are 18 contract loaders on work. The allegations, therefore, that as a result, 40 loaders employed by the Authority for shifting and further handling at the import warehouse had been artificially displaced from their work are not true. It is further submitted that, the concerned workmen receive their wages at a lower rate, since they are not permanent workmen but are protected by the High Court order, pending hearing and final disposal of the matter. The work as per the duty roster is issued on the monthly basis. Authority reiterated that, on and from 3-11-2002 it does not shift ten days old light cargo to the warehouse for further handling due to administrative reasons but it started shifting recently the unclaimed goods kept in the light cargo shed for an indefinite period and that the work of light cargo handling has been assigned to the contractor due to the increase in volume of work intermittently involved, which the existing loaders are incapable of handling. The litigation has been going on since 1989. Central Government issued Notification dated 16-11-1999 prohibiting the employment of contract labourers in operation of cargo handling i.e. Loading and unloading of cargo, which was challenged by it in Hon'ble High Court, Delhi who passed the interim order dated 23-11-1999 that the factual position prevailing with effect from 16-11-1999 to be continued and due to the said interim order the Authority could not enter into agreement with the contractor for a longer duration. M/s. Omega Enterprises has been entrusted with the contractual job assignment Authority is not aware whether he had employed 120 contract labourers to carry out the said work and the work carried out by the said contract labourers is not of a permanent nature. Authority further submitted that, there is required work to the permanent workmen employed by it as well as to the concerned persons. The concerned workmen cannot claim the benefit of permanency, as they are initially workmen of the contractor. Authority denied that, instead of assigning the work of light cargo handling to the loaders already employed by it they had temporarily contracted out the work at 30 days contract to one M/s. Mega Enterprises and 120 contract workmen had been employed to carry out those duties of permanent nature and that on the other hand 20 permanent workmen and 20 workmen concerned in the present reference were deliberately being deprived of their work through those illegal, arbitrary and unjustified changes in the service conditions and that was done with mala fide intentions to defeat their claim for permanency and the same are not borne out by facts. It is also contended by the Authority that, vague allegations have been made by the Union that, nature of duties carried out by those workmen was essential do not specify the workmen and hence it is not in a position to meet the same. Authority submitted that, its day-to-day activities have nothing to do with the work of loading and unloading of cargo, it is, therefore, that the work of loading

and unloading carried out by those workmen was an integral part of the day-to-day activities of the Authority. Authority submitted that, it provides trolleys as and when required to carry out the work of loading and unloading of the cargo. The attendance of the contract labourers is marked by the official of the Authority, as there is no contractor since 1-1-1993, and their services are protected by the order of the High Court, hence for the said reasons their muster roll is kept in the possession of the Authority, and since the said circumstances are the outcome of the Court orders same cannot determine the relationship between it and the concerned persons as that of the employer and the workmen. It is denied that, the Sr. Cargo Manager, Mr. K. K. Chadha, was supervising their work since said Mr. Chadha had died on 7-2-2003. It also submitted that, a person of his status cannot supervise the work of loaders. Authority submitted that, it issues the entry passes to the contract labourers, the validity of which depends upon the work requirement. The said passes are issued by the Authority to the agencies whose workers are deployed at Cargo Complex. The said passes merely authorize the persons to enter into the Cargo Complex for doing work on behalf of the contractor and the same are not allowed beyond a particular point, where the passes of B.C.A.S. are required in addition to the said passes. It is, therefore, denied that, the said passes were valid for one year. It submitted that, the concerned workmen report to the Officer-in-charge for their leave or for early leaving, as there is no contractor, for the reasons stated hereinabove, and it is not correct that in the matter of their leave or in the matter of early leaving were reporting to said Shri Chadha, the Assistant Cargo Manager as alleged. It is also contended by the Authority that it has been deducting Provident Fund contribution from their wages from October, 1999. It submitted that, from 1-1-1993 there is no contractor in respect of loading and unloading work carried out by the concerned workmen. It submitted that, the permanent workmen appointed by it are doing the work of loading and unloading, which may not necessarily be the same, similar and identical work carried out by the concerned persons, as the work differs from point to point. It is further submitted that, the question whether the contract labourers have been performing the same, similar and identical duties at par with the permanent workmen of the Authority, is a matter to be determined by Dy. Chief Labour Commissioner (C) under the Central Rules, hence, this Tribunal has no jurisdiction to adjudicate the said aspect of the dispute. It submitted that, the permanent workmen were appointed against the sanctioned posts which were created on the basis of the approval given by the competent authority, whereas the contract labourers were appointed on an ad-hoc basis by the contractor and the permanent workmen were appointed in accordance with the prescribed procedure laid down under the Recruitment and Promotion Rules, hence they get higher wages and their terms and conditions are revised after a period of decade and get all the statutory

benefits such as bonus, house rent allowance, provident fund, leave facilities, revision in wages; as well as different kind of allowances whereas concerned workmen draw the wages as per the revision of law applicable to them. Authority submitted that, the permanent workmen doing the loading and unloading work get the wages by virtue of the settlements reached between the management and the recognized Union; whereas the concerned persons/workmen have been retained by the Authority by virtue of the orders of the Hon'ble High Court and since the concerned workmen are not the permanent employees of the Authority the question of extending the benefits granted to the permanent workmen to them does not arise. Authority cannot deal with their service conditions as they are not its permanent workmen and hence it did not differentiate between the persons rendering longer services and the shorter services for the purpose of fixation of daily wages. There is no such provision under the Contract Labour Act to pay different rate of wages per day. Authority further denied that the services of the concerned persons are essential and are of continuing nature as alleged; as the work carried out by them is incidental to cargo handling work. In spite of its best efforts the Authority is not able to trace out the letter written by Mr. K.J. Rawtani, Dy. General Manager (Cargo) and it further submitted that, the remarks attributed on it does not drive home the point that their services are essential. These workers are continuing by virtue of the Court orders issued from time to time protecting them from being terminated from services and it therefore, maintain their record in respect of employment of concerned persons and as no contractor was willing to enter into an agreement with the Authority to execute the contractual assignment with the said force, Authority submitted that, record maintained by it does not show that concerned persons are permanent, regular and perennial nature as the loaders in Cargo handling. Authority contended that, the allegations made that as far as the present set of 20 workmen, who were employed as loaders and were called as department loaders do not convey any clear cut meaning, hence no averments are made. Since 1986, the contracts were awarded from time to time to M/s. Vijay & Co., M/s. Girija Enterprises, M/s. Sakpal Bros., M/s. Jac Enterprises, etc. Authority reiterated that there is a historical background for not continuing or engaging the contractor and hence merely because there is no contractor, it does not mean that they become the regular workmen of the Authority. They have been working as the casual loaders and not departmental loaders by virtue of the order of the High Court of Bombay and hence they are not part and parcel of its establishment and entitled to the benefits of permanency; much less from the date they had completed continuous employment of 240 days and for the reasons stated hereinabove the provisions of the Act are not applicable to the concerned workmen. The Authority further submitted that, the provisions of items 9, 10, and 13 of Fifth Schedule, read with Section 2(ra) of the Act cannot

be enforced as this Tribunal has not been empowered in this behalf to adjudicate the industrial dispute relating to any matter specified in the Fifth Schedule and the allegations that, the action of the Authority in not giving the status, benefits and privileges of permanent workmen to the concerned workmen i.e. departmental loaders clearly amounted to unfair labour practices under Items 9, 10 and 13 of Fifth Schedule read with Section 2(ra) of the Industrial Disputes Act, 1947 are not true for the aforesaid reasons. Authority further contended that, the concerned workmen are not entitled to the relief of permanency and other consequential reliefs as also award/removing alleged discrimination between them and other permanent workmen on the ground that said persons have been working under the Authority, supervision and control of the Authority, employer, from the respective dates of joining by them without break. Authority submitted that, prior to January, 1993 the concerned workmen were under the supervision, management and control from time to time of the contractors and their supervisors. After January, 1993 they have been protected by the said orders of the High Court of Bombay and hence, thereafter, the Authority has to do the work of supervision, management and control over their work and hence merely because there is supervision, management and control over their work by virtue of order of the High Court, they cannot become the permanent workmen of the Authority and hence they are not entitled to the benefits of permanency and other consequential reliefs and hence, there is no question of removing alleged discrimination between them and the other permanent workmen. Authority also submitted that they cannot claim the benefits of permanency and other consequential reliefs on the ground that they are performing same, similar and identical duties like other permanent loaders employed by the Authority as the work differ from point to point and that the said matter is to be determined by the Dy. Chief Labour Commissioner (C) under the Central Rules and this Tribunal has no jurisdiction to adjudicate the said aspect of the dispute. The said characteristic cannot, therefore, be taken as a criterion to conclude that the relationship of the employer and the workmen exists between the management and the concerned workmen. It is also contended by the Authority that its regular and day-to-day activities are the management of the airports, the civil enclaves and the aeronautical communication stations, to provide air transport services at the airport. Thus, the work of loading and unloading done by the concerned workmen is not an integral part of the regular and day-to-day activities of the Authority as alleged by the Union. Authority further contended that the concerned workmen are the contract loaders and not the departmental loaders, who are not entitled to the benefits of permanency, much less with effect from the date/day on which, each one of them had completed continuous service of more than 240 days in its employment. Authority admitted that, the said persons perform their duties on the premises of the Authority but it does not

mean that merely because the concerned workmen have been working on its premises, they are the workmen of the Authority. It further submitted that, the provisions of Article 39 of the Constitution of India accentuates the basic philosophy of idealistic socialism and the doctrine of 'equal pay for equal work' is a concept; which for the purpose of implementation requires complete and wholesome equality between the two groups; which does not exist. Authority submitted that, the differentia between the permanent workmen and the said persons is bound to exist, as the scales of pay and other benefits are attached to the definite posts but the contract labourers hold no post. It is submitted that, the allegations, therefore, that based on the provisions of Article 39 of the Constitution of India, as well as based on the doctrine of 'equal pay for equal work' the concerned workmen were entitled to receive all the benefits, privileges, advantages and other terms and conditions of employment, at par with the permanent workmen working with the Authority are not true. Authority submitted that, the employees of the Authority were governed by its Service and Disciplinary Regulations viz the I.A.A.I. (General Conditions of Service) Regulations, 1980, which were operative till 22-5-2003 and the same were replaced by A.A.A.I. (General Conditions of Service) Regulations, 2003, which came into force from 23-5-2003 and the I.A.A.I. (Conduct, Discipline and Appeal) Regulations, 1987 were operative till 8-5-2003 and the same were substituted by A.A.I. (Conduct, Discipline and Appeal) Regulations, 2003, which came into force 9-5-2003. Authority contended that, the allegations made that the mandatory provisions of Industrial Employment (Standing Orders) Act, 1946 which were applicable to the Authority defined the term 'employer' under Section 2(d), as also it provided for permanency of workmen under Standing Order Nos.4(B) and 4(C) of the Model Standing Orders are not true for the aforesaid reasons. It is further submitted that, the Authority maintains the seniority register, containing a seniority of its permanent workmen and the concerned workmen have been retained by virtue of the orders of the Bombay High Court, hence the question of maintaining their seniority list does not arise. It further contended that, since both the groups do not fall in the said class, the question of resorting to the continuing discrimination by it did not arise; as the discrimination presupposes unequal treatment to the equals. It is, therefore, denied that the discrimination still continues. The Authority also denied that it has violated the fundamental rights of the concerned persons under Article 14 and 16 of the Constitution of India. The Authority further submitted that, the permanent workmen were employed, in accordance with the Recruitment Rules prescribed under then Service Regulations, 1980 and there is a stringent test to which the said persons were subjected before being recruited to the posts of loaders, whereas the concerned persons were just recruited by the contractors from time to time; without following any prescribed

procedure by them. The allegations, therefore, made that, there was no intelligible differentia between two sets of workmen viz. 20 departmental loaders (in fact 18 loaders) and the permanent loaders employed by the Authority are not true. Authority reiterated that, it did not resort to any discrimination against the concerned persons. Authority further contended that, the allegations that discrimination practiced by it for years together and perpetuated against the concerned 20 Departmental Loaders was unreasonable, illegal and unjustified are without any basis and the same are not true. Since it did not commit any discrimination, the question of removing from the date it had been effected and that the disparity in the matters of wages and other terms and conditions of employment require to be removed from the date such alleged discrimination/disparity was started or practiced by it against the concerned persons does not arise. The allegations, therefore, made that the disparity in the matters of wages and other terms and conditions of employment require to be removed from the date such discrimination/disparity was started or practiced by the Authority against the concerned 20 workmen are not true. Authority denied that, the concerned persons are entitled to any relief and benefits, much less from the retrospective dates i.e. the day/date on which each one of them had completed continuous service of 240 days in its employment. Authority also denied that, they are entitled to any consequential benefits of wages, allowances etc. at par with the permanent loaders, and for a declaration that, they are its permanent workmen. Authority further submitted that, M/s. Jee Enterprises was the last contractor, who was awarded the contract to carry out the work of loading and unloading of cargo for the period from 1-10-1990 to 31-12-1992. However, as from 1-1-1993 the concerned workmen were protected from termination of their services by the order of Bombay High Court pending hearing and final disposal of the matter, the said contractor did not undertake the job; as he was not prepared to continue with the existing work force. The allegations, therefore, that, from 1-1-1993 the concerned workmen had been departmentalized are not true. The quantum of work being carried out by the loaders is more or less the same, whereas the quantum of work at import warehouse has dwindled to a great extent, from time to time as per work requirement; the orders are issued by the Personnel department. The allegations therefore that, the quantum of work done by the concerned loaders at cargo complex and import warehouse has been constantly increasing over the years while the number of workmen had remained the same are not true. Authority further submitted that, there are 9 contract labourers, who were engaged from time to time by the specialized firm, who maintain the Baggage Conveyor System at Terminal 1A at Santa Cruz. The Union did not implead the contractors engaged from time to time by it as the necessary and proper parties in this proceedings, though the contractors were impleaded in the writ petition filed in the High Court. The said contract labourers are

being continued, by virtue of orders issued by the Hon'ble High Court from time to time and last being dated 16-12-2002. The Authority submitted that, it is not aware whether they are designated as Mechanics, electricians, helpers/khalasis by their employer. Their technical qualifications are not known to the Authority; as their work is controlled and supervised by the contractor to whom the work is awarded. The contractor has to maintain the serviceability of the baggage conveyor system, rectifying any electrical, mechanical fault occurred during the operation of the Conveyor and to carry out periodical inspection of the system. The weighing scale is however not being maintained by the contractor. Hence, the allegations that those workmen (i.e. 9 contract labourers) employed at Terminal 1A at Santacruz, were performing the duties of attending breakdown of Conveyor Belt, doing electrical maintenance of Conveyor Belt, doing mechanical maintenance of conveyor belt, attending panel belt board, cleaning and oiling the conveyor belt, removing and fitting Gear Box, checking/repairing/maintaining weighing scales and doing overall maintenance work of Conveyor Belt including over-oiling thereof at Terminal 1A are not known to it and the Union is therefore put to strict proof thereof. Authority further submitted that the contract labourers perform their duties as per the instructions given by their contractor, in the even of any breakdown of the conveyor system, the Engineer/Supervisor of the contractor gives the instructions to the said contract labourers depending upon the frequency/gravity of the work requirement in order to achieve serviceability of the system. It is submitted that, the contract labourers had been appointed by the contractors to whom the contracts were awarded from time to time. When the Terminal 1A was commissioned on 18-4-1992; most of the said contract labourers were appointed by M/s. Gannon Dunkerley & Co., Bombay, who supplied and installed the Baggage Conveyor System at Terminal 1A at Santacruz and the contract labourers are working for last many years; as their services are protected by the order of the High Court. The Authority further submitted that, Mr. Rajnikant, Sr. Superintendent Engineer (E) and Mr. J.P. Singh, the Manager - Engineering (E) give the instructions to the Engineer/Supervisor appointed by the contractor to attend the fault in the Conveyor System; who in turn instruct the contract labourers to carry out the jobs assigned to them. The said work is performed by Mr. Manish on behalf of M/s. Delite Engineer, the present contractor. The allegations, therefore, made that the Jr. Engineer (presently Shri Rajnikant) and the Manager - Engineering Shri J.P. Singh were supervising and controlling the activities of the concerned workmen are not true. Authority submitted that, the requirement of tools/equipment is not being met by the Authority but the same is being arranged by the contractor; as and when required to attend to maintenance of Baggage Conveyor System. It is submitted that, therefore, the allegations that all the tools/equipments such as ring sets, spanners, grease, guns,

wires, bulbs, welding machines, conductor, relay panels, etc. were provided by the Authority are not true. The Authority submitted that, it engaged M/s. Gannon dunkerley and Co., M/s. Sequera Enterprises and M/s. Delite Engineer through the tender process. They are the specialised agencies in the field of conveyor system for the maintenance of Baggage Conveyor System. The allegations, therefore, that, the Authority had introduced as intermediate contractors some parties such as M/s. Gannon Dunkerley & Co., More Marketing Pvt. Ltd. and then M/s. Delite are not true. The Authority further submitted that, the averments made by the 2nd Party in respect of number of conveyor belts and the number of contract labourers deployed at conveyor system at Terminal 1A in respect of Serial No.1 are correct, except that a conveyor belt meant for arrival does not function. It submitted that, at Terminal 1B; 6 belts operate round the clock and 3 belts meant for courier services do not function round the clock and 6 permanent workmen are employed to man the belts round the clock. Authority submitted that there are 13 belts at Terminal 2-A and 2-C and 33 permanent workmen are maintaining the same round the clock. Hence, the allegations made by the Union that, at Terminal II, 16 Belts were functioning and 42 permanent workmen were employed to carry out that work (in 3 eight hours shift at phase I and II of terminal II) are not true. It further reiterated that, the concerned contract workers have been retained by virtue of the order dated 16-12-2002 of the Hon'ble High Court, Bombay. Authority further submitted that, on enquiry the said contractors have informed that the contract labourers were never required to perform their duties beyond their normal duty hours and hence the question of paying overtime wages by the contractors does not arise. Authority further submitted that, the contract labours were appointed by the said contractors and were/are paid their wages and other fringe benefits by them. There is supervision and control over their work by the Engineer/Supervisor appointed by the present contract also. Authority has no power to take disciplinary action against them and it has no power to remove them. Authority reiterated and contended that, the contract labourers carry out their jobs at the direction of the officer of the contractor, they perform their jobs; as per the site requirement of the contractor and that, the place of work of the contract labourers is not a conclusive test to determine the relationship between it and the said contract labourers as that of the employer and the workmen. It also reiterated that, the tools, apparatus and equipments are provided by the contractor to the said contract labourers and not by the Authority as alleged. It is also denied by the Authority that, the permanent workmen employed by it were performing the same, similar and identical duties alongwith the concerned workmen and that there was no difference of whatsoever nature in their duties as all alleged. Authority also submitted that the contractor allocates 3 shifts to the contract labourers on a rotation basis and the

allegations that they were employed with the Authority without any break are not true and are without any basis. Authority also submitted that, the work in respect of maintenance and operation of Baggage Conveyor System at Terminal 1A at Santacruz is like any other work at the Airport and the work in respect of maintenance and operation of Baggage Conveyor System is not permanent, regular and of perennial nature and without prejudice to the said averments Authority submitted that this Tribunal cannot decide whether the work carried out by the contract labourers is of permanent, regular and perennial nature; as it is within the ambit of the Central Government. The services of baggage conveyor system are utilized through the specialized agency as and when required at the airport. The technical know-how lies with the specialised firms: who spend a number of years in designing of the Baggage Conveyor System hence by no stretch of imagination, the contractor can be labelled as the namelender. The employers themselves or their officers remain present at the site, where the Baggage Conveyor System is in operation. They have to observe the serviceability of the Baggage Conveyor System. Authority also denied the allegations made by the Union that, the so-called contractors were mere namelenders and they were never present on the premises; where those activities were carried out by the concerned workmen. Authority submitted that, during the period from February 2000 to November, 2000, the said protected contract labourers by the High Court were paid directly by it; as the Authority could not award the contract in the operation of Conveyor Belt System; following the abolition of the contract labourer system by the Notification dated 16-11-1999 and as the said notification was stayed by the High Court of Delhi; the contract was awarded to the contractor, under whom the contract labourers are working. Authority further submitted that, during the said period from February, 2000 to November, 2000 it had to effect the payment of wages for the reasons averred hereinabove and hence their attendance was certified by the officers of the Authority and the attendance record was forwarded to the Accounts Department for effecting the payment of wages. The allegations, therefore, made that their muster-roll was signed by Junior Engineer one Shri Bannerjee, with Manager (Engineering) Shri J.P.Singh for the said period are not true. Authority submitted that, since the entry to the Terminal building is restricted from the security point of view, the temporary passes are issued to the contract labourers, working on behalf of the contractor; who is full responsible for the good conduct and behaviour of the contract labourers during the contractual period in the course of the execution of work at the Terminal building. The temporary passes are issued by Bureau of Civil Aviation Security. The Authority submitted that, there is surplus staff available with it at other areas who could have been diverted to baggage conveyor system but for the order dated 16-12-2002 of the Hon'ble High Court protecting the services of the contract labourers; pending and final

disposal of the matter, it could not be diverted. Authority submitted that, the concerned persons are not deployed in Conveyor System at Terminal 2B, which is not functional since October, 1999 but since the said persons are protected by virtue of the order dated 16-12-2002 of the High Court the said persons are deployed in its different Sections; as they are not having any work in Conveyor System by M/s.A.P. Morling Pvt. Ltd., the company incorporated in Australia. The allegations made by the Union that the said 12 workmen were employed at Terminal II-B are without any basis and the same are not true. It is submitted that all of them are unskilled persons. It is not true that they were designated as wiremen, mechanics and Khalasis. Union has given details in respect of the said persons at Annexure-I. Since they are not the workmen of the Authority and the Contractor has not been impleaded in this reference, by the Union, though the same was impleaded in Writ Petition filed in the High Court by the Union, the Authority is not aware about the authenticity of the details furnished in the said Annexure-I in respect of the designation, date of joining, original department etc. The Authority reiterated that, the said persons were never designated by it and they are not its workmen; apart from the fact that, they are being paid minimum wages of the unskilled category from 1-11-1994. The Authority submitted that, as the old Conveyor System of Terminal II-B was dismantled and a new Conveyor System of Terminal II-B was installed during the year 1994-95; the new Conveyor System is being maintained by its permanent workmen and hence there is no work to the contract labourers in the Conveyor System. They have not been departmentalized in the establishment of the Authority at any point of time, much less on 1-11-1994. It submitted that, 13 Conveyor Systems are installed at terminate II-A and II-C which are manned by the permanent workmen, round the clock. The Authority reiterated that the said 12 persons are not carrying out any work in Conveyor Section and hence a question of performing identical duty similar to 9 persons deployed at Terminal 1A did not arise. The Authority submitted that, the allegations, therefore, that, those 12 workmen employed at Terminal 2B were Performing the same and similar and identical duties like aforesaid 9 workmen, are not true. The Authority submitted that, prior to 6-12-1994, the concerned persons were working with M/s. Defite Engineers; whose contract was revoked, as new conveyor system was installed on and from 6-12-1994 by M/s. A.P. Morling Pvt. Ltd. which is having added advantages of minimum preventive maintenance, with minimum manpower requirement. The concerned persons were rendered surplus as the permanent workmen were employed to man the said conveyor system alongwith other Conveyor Systems; for which the engineers of M/s. A.P. Morling Pvt. Ltd., Australia and M/s. Interroller, Singapore had conducted on-line training to its permanent workmen but by virtue of the order of the High Court they have been retained and posted in its different sections. Authority submitted that, therefore, the allegations that

from 1-11-1994 they had been departmentalized in Authority, and that, they have been designated as Wireman EMD-I, Mechanic EMD-I, Khalasi EMD, Wiremen EMD-II, Mechanic EMD-II, Khalasi EMD-II etc. are not true. Authority reiterated that since the concerned workmen are not the workmen of the Authority, the question of extending the benefits of permanency to them does not arise. Authority submitted that the Conveyor Belt System has not been installed at terminal 2B, which is not functional since October, 1999, there are permanent workmen number 33 and not 39, working for the Conveyor Belt System installed at Terminal 2A and 2C. Authority submitted that, the duty carried out by the permanent workman attached to the Conveyor Belt System is entirely of the specialised nature and the permanent workmen had been trained by the Engineers of M/s. A.P. Morling Pvt. Ltd. to handle the sophisticated and new technology version of the Conveyor Belt System installed at Terminal II-A. The said 12 persons on the other hand perform the duties which is of an unskilled nature in different sections as stated hereinabove. Authority contended that, the allegations, therefore, made that since there was no difference of whatsoever nature between the duties carried out by the permanent workmen and the so called contract labours, there was no justification or any rational reason for treating the 9 workmen as contract labours are not true. Authority reiterated that the work is not available to them but they are being continued; in view of the order of the High Court, pending the hearing and final disposal of the matter. The writ Petition was filed by the said 12 workmen, being Writ Petition No. 2641 of 199W against the running and maintenance contract of Conveyor Belt System installed at Terminal 2B only. Those sophisticated equipments require qualified and trained staff to carry out day-to-day preventive maintenance and operation and as such the same is being carried out by the trained permanent workmen and running and maintenance contract has not been awarded for the said sophisticated Conveyor System to anyone since 1994-95 and hence no work is available to the said 12 persons in Conveyor Belt System. Moreover Terminal II-B is also not in operation since October, 1999. Authority contended that, the allegations that, the entire action on the part of the Authority of refusing to give the status, benefits and privileges of permanent workmen to the concerned workmen was nothing but a subterfuge and camouflage are without any basis and the same are not true.

(16) The Authority further submitted that, the work in respect of Conveyor Belt System was entrusted to the contractors from time to time by inviting tenders. The said tenders were scrutinized by the committee entrusted with the said assignment and one of the tenders was accepted; after following the rules and regulations meant for the same, the party whose tender was accepted has to execute the agreement. It obtained the certificate of registration; whereas the contractor obtained the licences under the Contract Labour Act. Authority submitted that, the Union did not pray for declaration that the contracts were sham

and bogus, at any point of time. It submits that the concerned persons are not different from the persons covered in the Writ Petition No. 279 of 2000, as borne out by the wordings of the order of reference dated 7-3-2003. The bald and wild allegations, therefore, made that the earlier introduction of intermediate contractors resorted to by the Authority by way of some paper agreement entered into between Authority and the so-called contractors is/ was nothing but sham and bogus arrangement and it was a camouflage to deprive the concerned workmen and those concerned in Writ Petition No. 279 of 2002 of the benefits available to the permanent workmen are without any basis and are not true. Authority contended that, its action was fair, proper, bonafide and legal; while entering into the contracts with the contractors for Conveyor Belt System and thereafter. Authority also denied the allegations made by the 2nd Party that, the so-called contracts, which were purportedly entered into by the Authority with the so-called i.e. mere name-lenders were sham and bogus contracts. Authority also denied that, merely because the concerned persons are deployed on the premises belonging to it, it means that, the relationship between them and the Authority is that of the workmen and the employer. Authority further contended that, the rates of wages of the said persons are determined by the Contract Labour Act and not by it. It submitted that, the provisions of Section 23 of the Indian Contract Act have no any application in the said contract. When the concerned persons were working with the contractors, they should have claimed the benefit of permanency; which is not based on various labour legislations as specified therein and the statutory benefits such as Provident Fund provided under the Employees' State Insurance Act, 1948, the Payment of Bonus Act, 1962 and Industrial Employment (Standing Orders) Act, 1946 from the said contractors and the concerned persons are not entitled to claim any of the benefits from the Authority. The Authority, therefore, denied the allegations made by the Union in this respect. Authority denied that, it cheated the concerned workmen. In fact, the Union has cheated them by giving false promises; which cannot be fulfilled under the provisions of the labour law. Since it did not cheat them the question of victimization did not arise. Cheating per se does not amount to victimization; even by any stretch of imagination. The bald, wild and derogatory allegations made by the Union that the concerned workmen have been victimized because they had been cheated by the Authority and that, cheating itself amounted to victimization of the concerned workmen are without any basis and the same are not true. Authority submitted that, the concerned persons are being paid the wages as per the provisions of the Rules; which provides that, the rates of wages payable to the contract labourers by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 for employment, where applicable and where the rates have been fixed by agreement, settlement, etc. not less than the

rates; so fixed. Hence, the allegations that, the concerned workmen were entitled atleast to the wages and allowances which were paid by the Authority to the permanent workmen at the lowest level; in view of Regulation 25 of the Contract Labour (Abolition & Regulation) Act are not true. However, the Airport Managerial Personnel check the contractual work; which are being carried out by the contractor, to ascertain whether it is with reference to the specification of the agreement. Authority's personnel do not supervise and control the day-to-day work of the contractor. Therefore, the allegations made by the 2nd Party that, the substantial part of the responsibility of the Airport Managerial Personnel was the supervision and control of the work being performed by the so-called contract workers are without any basis and the same are not true. The Authority submitted that, the Operations Department has issued Job Description (Duties and Responsibilities) of the Airport Managers and the functions which are of a general nature; are based on the headquarter's guidelines; which have been incorporated ISO manual. Authority submitted that, the contracts entered into with the contractors, in accordance with the Rules and Regulations framed by it are fair, proper, bonafied and legal. Hence, the allegations made by the Union that, whenever there had been so-called contracts between the name-lender contractors and Authority were mere paper arrangements and in fact and in practice, full and complete control was vested in the Authority are not true. Authority submitted that, the averments made by the Union exposes its credibility ignoring the orders passed by the High Court from time to time at the prayers of the Union, protecting the services of the said persons; from being terminated; pending the hearing and final disposal of the matter. The allegations therefore made, ignoring the said backdrop that when the Authority realised that the present set of workmen were in fact their workmen; those workmen had been departmentalized are nothing but figment of imagination and contrary to the facts on it record. It submitted that, the Authority had called for detail in respect of employment of the said contract labourers alongwith other contract labourers at the instance of the Headquarters at New Delhi in order ascertain the correct factual position; as some of the contract labourers are being paid wages directly by the Authority in view of the protection granted by the Honble High Court of Bombay from time to time, dispensing with the services of the contractor. If they were in the employment, as their workmen and were to be made permanent by the Authority, as alleged, there would not have been litigation for years together. The statement made in this regard is mischievous one; prompted with the ulterior motive. The allegation, therefore that, in the year 2000 and 2001 the Authority had called for details regarding employment of all the concerned 41 workmen concerned and that those workmen were asked to furnish details regarding their dates of birth, qualification, date of departmentalization etc. and they were also asked to submit

their latest photographs and accordingly, the concerned workmen had furnished all the details, information with their respective signatures and at that time itself, it was agreed upon in principle that, those workmen will be made permanent and that however inspite of that, the concerned workmen had not been made permanent by the Authority till that date are without any basis and the same are not true. Authority further submitted that, the Directive Principles of the State Policy enshrined in the Constitution are not equals unequal. It did not discriminate against the contract labourers who are not its workmen. The allegations, therefore, that in view of the Directive principles of State Policy under the Constitution of India, the responsibility was cast on the Authority not to indulge in discrimination and to give fair service conditions and fair wages to all the workmen employed under them without any discrimination are without any basis and the same are not true. The Authority denied that it resort to any discrimination against the said persons as alleged. The Authority further contended and reiterated that, the concerned workmen are not entitled to the status, benefits, privileges and advantages of the permanent workmen as they were originally appointed by the respective contractors to do the contractual work; and hence they are the contract labourers. It submits that the Honble High Court in vider dated 3-5-1991 passed an Order in Motion No. 3-04 of 1990 in Writ Petition No. 1491 of 1989, vide Annexure II to the petition has categorically clarified at paragraph 18 that the mere fact that the workers were continued to be employed for the works, if any carried out departmentally by virtue of that order will not enable them to claim as of right that they had become direct employees of the first Respondent (i.e. Authority). The Authority did not resort to discrimination; so as to engage in unfair labour practice under Item 10 of Fifth Schedule read with Section 2(r) of the Act. It further submitted that, Fifth Schedule, read with Section 2(r) of the Act was inserted by the Industrial Disputes (Amendment) Act, 1982 with effect from 21-8-1984 but the same cannot be enforced, as the Central Government Industrial Tribunal-Labour Court has not been empowered in this behalf to adjudicate the industrial dispute relating to any matter specified in the Fifth Schedule. The Authority further submits, without prejudice to the said contentions, that item 10 cannot be invoked by the concerned workmen as they are not the "workmen" within the meaning of Section 2(s) of the Act. The allegations therefore that the concerned workmen were denied the status, benefits, privileges and advantages of permanent workmen made the guise that they were contract workers and that in fact, the concerned workers and that such were not at all the contract workers and that such discrimination amounted to unfair labour practices under Item 10 of Fifth Schedule read with Section 2(r) of the Industrial Disputes Act, 1947 are not true. Authority submitted that, the concerned workmen had worked for the last many years, as their services were protected by the

orders of the Bombay High Court from time to time, pending the hearing and final disposal of the matter. Moreover, the persons deployed at Terminal 1A are under the supervision and control of M/s. Delite Engineers and earlier under some other contractors who have not been impleaded in this reference and hence, it is not aware whether they had worked for last several years without any break and interruption in their employment and hence, merely because some of them had worked for last many years, they cannot claim the benefits of permanency in its employment; with other consequential benefits. The Authority submits that the Hon'ble Tribunal cannot grant the said benefits for the aforesaid reasons. The allegations therefore made that the concerned workmen had worked for last several years without any break and without any interruption in their employment with the Authority and that all of them had put in uninterrupted service of number of years continuously in the employment of the Authority and that as such, each one of them was entitled to the benefits of permanency in the employment of the Authority with other consequential benefits and deprivation of the same by the Authority was unconstitutional, unreasonable, unjustified and illegal are without any basis and the same are not true. Authority reiterated that, the contracts entered into with the Contractors but it were in accordance with the prescribed Rules and Regulations and the same were proper; fair, bonafide and legal. The contractors by virtue of the said agreements gave undertakings to produce the given results for the establishment through the contract labourers. The allegations, therefore, that upon the lifting of the veil, it could be seen that there was direct employer/employee relationship between the Authority on the one hand and the workmen concerned therein on the other hand and that wherever there were intermediate so-called contractors; they were mere name-lenders or brokers or agents and that such contractors had never been employer of the concerned workmen are without any basis and the same are not true. The concerned persons should have claimed fair conditions of employment from the respective contractors. The allegations, therefore, that the engagement of the workmen on large scale under the label of contract labours was victimization of the concerned workmen and it was nothing but their exploitation and that it was resorted to with the malafied intentions by the Authority with a view to deprive those workmen of fair conditions of employment and with the ulterior motive of denying them the status, benefits and privileges of permanent workmen are nothing but figment of imagination of a fertile brain and the same are not true. The Authority denied the allegations that the so called contracts who were introduced by the Authority were not registered contractors and that in any event, those contractors had deliberately been withdrawn by the Authority and the concerned workmen had been departmentalized. Authority also denied that the so-called contractors, whenever they were in the picture, they did not have valid and proper

licences for recruitment and engagements of contract labourers. Authority reiterated that the concerned persons are not having any skill, education worth the name, except experience acquired by them by doing the repetitive work and their performance is not the mark. The allegations, therefore that all the concerned workmen were having necessary skills, experience, qualification, etc. to perform their respective duties and that in fact, all of them had been performing their duties sincerely, honestly and to best satisfaction of the Authority all those years are not born out by facts and the same are not true.

17. Authority submitted that, the Hon'ble Tribunal has to decide the preliminary issues at the threshold of the proceedings regarding the jurisdiction of the Hon'ble High Court of Bombay in passing the order dated 16-12-2002 in Writ Petition No.279 of 2000; directing the Government of India to make the reference of demands specified therein to the Hon'ble Tribunal for adjudication as well as that of the Government of India, Ministry of Labour, New Delhi, to make the reference in terms of the said order, to this Hon'ble Tribunal. It submits that the Hon'ble Tribunal has also to decide as the preliminary issues regarding locus-standi of the Union in espousing the cause of the concerned persons and the validity of reference under Section 2(k) of the Act, etc. Authority submitted that, the Union has for the first time made the allegations that the contract between it and the respective contractors are sham and bogus, in view of the directions issued by the Hon'ble High Court of Bombay in para 4(1)(1) of the order dated 16-12-2002 in Writ Petition No.279 of 2000. Authority reiterated that the contracts entered into with the contractors were in accordance with the prescribed procedure laid down under the Rules and Regulations and in conformity with the provisions of the Contract Labour Act. It, therefore, submitted that the Hon'ble Tribunal cannot pass the order holding and declaring that the contract between it and the respective contractors are sham and bogus and are camouflage; to deprive the persons covered in the order of reference, of the benefits available to the permanent workmen employed by Authority. Authority also contended that, this Hon'ble Tribunal cannot pass the order holding and declaring that the concerned workers are its direct workmen and also cannot pass an order directing it to give status, benefits and privileges of the permanent workmen to all the concerned persons, much less from the day/date each one of them had completed continuous service of 240 days, at par with the permanent workmen and to pay them the arrears rising therefrom, with 18% compound interest, to give equal pay for equal work to the concerned persons for the reasons stated hereinabove. Authority also contended that, the concerned persons are also not entitled to any interim reliefs and it would tantamount to granting the final reliefs, which cannot be done, unless the alleged industrial dispute is adjudicated on merits. The interim relief should not be the whole relief that the contract labourers may get, if they succeed finally. The Authority also submitted that, the question whether the contract labourers are entitled to receive all the benefits applicable to the permanent workmen

of the Authority, to all the contract labourers covered in this reference, with immediate effect, cannot be adjudicated by this Tribunal as the same has to be determined by the Dy. Chief Labour Commissioner (C) as provided under the Central Rules and hence the Hon'ble Tribunal has no jurisdiction to adjudicate the said aspects of the dispute. The Authority further contended that, this Hon'ble Tribunal cannot pass the interim orders directing the Authority to pay wages consisting of basic wages plus dearness allowances paid to the lowest category of regular employees doing the same work, as the contract labourers, concerned persons, as the order of reference itself is null, void and bad in law for the reasons averred elaborately in the written statement. Without prejudice to the above the Authority submitted that the question whether the work performed by the contract labourers is the same work as carried on by the permanent workmen employed by the Authority, cannot be adjudicated by this Hon'ble Tribunal but the same has to be determined by the Dy. Chief Labour Commissioner (C) under the Central Rules and hence the Hon'ble Tribunal has no jurisdiction to adjudicate the said aspect of the dispute and the question of adjustment with final determination/outcome of the reference does not arise. The Authority further submitted that, the concerned persons are not the workmen of the Authority. Authority contended that, this Hon'ble Tribunal cannot pass the order, granting any other better or consequential relief and cannot grant any relief of whatsoever nature as the order of reference dated 7-3-2003 is null, void and bad in law and prayed that, the order of reference dated 7-3-2003 be rejected with costs.

18. 2nd Party Union filed rejoinder, at Exhibit U/12. The Second Party reiterates all the contentions and averments made in the Statement of Claim as if the same have been set out specifically and mentioned herein and that, it should not be taken as any admission on the part of the 2nd Party of the allegations and contentions of the 1st Party's written statement dated 9th January, 2003. Each and every contention made in the said written statement which is contrary to the Statement of Claim, except for the typographical error, is hereby denied most emphatically, jointly and severally, unless specifically admitted hereinbelow. As regards preliminary objection raised by the 1st Party in connection with the maintainability of the claim Union and deciding it as a preliminary objection before deciding the claim. 2nd Party contended that, the said objections are irrelevant, mischievous and not sustainable in law and in facts and have been made with the intention delaying, defeating and denying the rightful claim of the concerned workmen. 2nd Party contended that it is an admitted position that, the present set of workmen have been fighting for permanency for last so many years in various Courts and forums and the 1st Party has been forced to protect the services of the present workmen only upon the orders of the Court. Union further submitted that, in the course of the multifarious proceedings in the various

courts, including the proceedings in the High Court at the hearing and disposal of the Writ Petition No. 279 of 2000, the 1st Party has failed to raise any of the legal objections and submissions made herein and hence the same be struck off their defence and the 1st Party be estopped from raising the same at this late stage of the proceedings and contended that this Hon'ble Tribunal has no jurisdiction to go into the preliminary objections raised by the 1st party being bound by the orders of the Bombay High Court in Writ Petition No. 279 of 2000 and the order of reference of the appropriate Government. It is contended by the 2nd Party Union that at the time of hearing of the writ petition, 1st Party had consented to the order directing the Government to refer the matter to this Hon'ble Tribunal and hence is estopped from raising this issue now before this Hon'ble Tribunal. 2nd Party submit that the submissions made by the 1st Party that, the order of reference being made on the direction of the Court is in contravention of the law are false to its own knowledge and record. 2nd Party contended that, it had been raising this demand of permanency since years and had given detailed written submissions to the Government with regard to the question of abolition wherein the sham and bogus nature of the contracts had been also dealt with and all these submissions were part of the record in W.P. No. 279 of 2000, especially in paragraphs 4 and even in the earlier proceedings. The Government of India had decided to abolish the contract labour system in the present categories of work based on the material before it and this material was sufficient for it even have referred the present dispute for adjudication. Hence, 1st Party's contention that the only material on the basis of which the Government came to the conclusion was the order of the Hon'ble Bombay High Court is incorrect on the record and its own knowledge. 1st Party did not raise any objection to the same being allowed and hence the same binds the 1st Party. Hence, the plea of sham and bogus had been raised before the Hon'ble High Court and the High Court applied its mind on the particular facts of the case before referring the same for adjudication. 2nd Party further submitted that, it had also raised a demand with the 1st Party regarding the sham and bogus nature of the alleged contracts and demanding that the present workers be declared and absorbed as permanent workers and on the Management's failure to respond to the same, sent the same to the Regional Labour Commissioner along with its justification. Union submitted that, the dispute was heard by the Assistant Labour Commissioner and on the failure of the 1st Party Employer, to respond the same, the same was referred for adjudication. However, due to the pendency of the present proceedings, the same was not taken up for adjudication. It submitted that all these facts are within the knowledge of the 1st party and have been deliberately suppressed by it and allegations, which are false to their own knowledge and information, have been made with a deliberate attempt to mislead this Hon'ble Tribunal. Union further submitted that, the High Court has the powers to refer any dispute for

adjudication in exercise of its powers under Article 226 of the Constitution of India. It submitted that the 1st Party has distorted and misinterpreted the Delhi High Court order in Writ Petition No.6540 of 2001 and the judgment of the Apex Court in SAIL for its ends. The Bombay High Court order is the correct interpretation of SAIL and in any case this Hon'ble Tribunal is bound by the same and cannot go into the correctness of the same.

19. Union submitted that, the allegations made by the 1st Party regarding its locus standi are false and are denied. Union stated that it has permanent workers as its members and is fully authorized and entitled to represent the workers in the present reference. Union denied the contentions of the 1st Party that the persons mentioned in the Reference are not workers of the 1st Party. It contended that, the concerned workmen are their members and they are entitled to represent them in the present proceedings and the said contentions have not been taken by the 1st Party previously in any of the proceedings and the same have been taken now with intention of delaying the proceedings. Union contended that, for adjudicating any industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 the test of existence and/or apprehension of dispute, is completely satisfied in this case and the Reference is between 'the Employer' AND 'the Workmen' employed by 1st Party.

20. With reference to the allegations regarding non-joinder of the parties, 2nd Party contended that, the alleged contractors keep changing, it had made the then alleged contractors party to the proceedings in Writ Petition No. 279 of 2000 but none of them appeared despite being served, no reply was filed by them and hence they are presumed to have admitted the case of the Petitioners and hence their non-joinder is not bad in law and admittedly the said alleged contractors keep on changing hence it would not be feasible to make them the parties to the reference and admittedly some of the present workmen have been departmentalized, therefore, there is no question of any joinder of parties. Hence the objection of the 1st Party in this regard is not sustainable in law.

21. Second Party Union submitted that, the contentions of the 1st Party regarding the definition of 'Air Traffic Service' instead of 'Traffic Services' mentioned in paragraph 4 of the Statement of Claim is correct and the mistake was a typographical error.

22. Union reiterated that, the details given in Annexure A of the workers are correct and the said details were filed even in Writ Petition No. 279 of 2000 and in various other proceedings but the 1st Party did not raise any such objection earlier nor it did file its correct list of contract workers before any authority, hence its objection is not sustainable being mischievous and an afterthought.

23. Union denied the allegations of the 1st Party that the loaders in the present reference are not doing the same

and similar work as the permanent loaders and that their work is of routine and repetitive nature and state that the workmen in the present reference have the requisite skills and are performing the same, similar and identical duties as the permanent loaders. Union also denied that, the alleged contractors refused to renew the contract on the ground of non-employment of the present workmen as alleged by the 1st Party. Union further submitted that, the allegations regarding the supervision of the work being done by one Manish of M/s. Delite Engineer, the present Contractor is false as M/s. Delite Engineer is no longer the name lending contractor since the last six months, and it is not correct that one of the conveyor belts at Serial No.1 does not function as the same is functional but kept shut by the 1st Party. Union also denied the allegations that there is no work available for the present workers and therefore the said workers are being deployed in different sections due to unavailability of work. It submitted that, there is sufficient work but the workers were deliberately removed because of the legal battle. Union further stated that, the permanent workers were deployed to do the same work from Terminal IIA and the present Workmen could have easily been continued to perform the said jobs. Union/Workmen denied that these are not doing the same and similar work as permanent loaders and that the permanent workers have been specially trained for the work and state that the same is false as per the records of the 1st Party. Union/Workmen stated that there was no training provided and the work is the same as was being performed by the present workmen and that these workmen have the requisite skills to perform and were performing the same, similar and identical duties as the permanent conveyor belt operators and that in fact the work being performed by the present workmen requires more skill and technical qualifications than required for Conveyor belt operation. Union also denied that the averments made by the 1st Party that, the Terminal IIB is not operational and contended that, the same are mischievous and misleading with the deliberate and mala fide intentions of defeating and denying the present workmen their legal rights.

24. In view of the above pleadings Issues were framed on 11-12-2007, at Exhibit 65, and on the application of the 1st Party dated 5-2-2008 and of 2nd Party dated 8-1-2008, the said Issues were recasted, at Exhibit 81, which I answer as under:

Issues	Findings
1. Whether the contract between Airport Authority of India and Respondents contractors, is sham and bogus and is camouflage?	yes
2. Whether the workmen involved in the reference should be declared as permanent employees of the Airport Authority of India?	yes

- 2A) If yes since when? 07-03-2003
- 3) Whether workmen involved in the reference are entitled to get status and benefit alongwith privileges as of Permanent workmen as claimed? Yes
- 3A) If yes, since when? 07-03-2003
- 4) Whether workmen involved in the reference are entitled to get directions from this Court to Airport Authority of India to pay them wages and other consequential benefits? Yes
- 4A) If yes, till what date? From 07-03-2003 till they work with Authority.
- 5) Whether workmen involved in the Reference are entitled to get the wages on the basis of equal work and equal pay? Yes
- 6) Whether workmen involved in the Reference are entitled to get benefits applicable to permanent employees? Yes
- 6A) Whether Loader & Electrical Maintenance Workers are entitled to relief of continuation with full backwages w.e.f. 1-7-2007? Yes
- 7) What order? As per order below
- 7A) Is reference had in law as stated by First Party in para 1 to 4 of its Written Statement and under Section 2k of I.D. Act? No

REASONS:**ISSUE NO. 7A:**

25. This issue is framed on the basis of the contentions taken by both on the basis of terms of the reference which was sent by the Central Government, Ministry of Labour, as per the directions given by the Hon'ble High Court in Writ Petition No.279 of 2000. 1st Party i.e. Airport Authority of India (Which is hereinafter called as "Authority") in its Written Statement Exhibit ML/ 18 contend that, Contractors are not made party and behind said contractors nature of contract or its genuineness as challenged by the Union cannot be decided by this Court. The wording of the Reference as set out reflect that this reference was referred by Labour Ministry, Central Government simply as per the directions of the Hon'ble

Bombay High Court and ask this Tribunal to decide whether the contract between the Authority and the Respondent contractors is sham, bogus and camouflage? As we know there cannot be status to any party in the reference as a Respondent. Much capital is made by the 1st Party's Advocate saying that, such contractors are not made party in the proceedings so behind their back genuineness of the contract cannot be decided. Besides they have contended that, the reference is bad for non-joinder of the necessary parties as Contractors are not party. After all, in the Writ Petition on the basis of which Hon'ble High Court directed Central Government to send the reference all Contractors were party in the said Writ Petition. They were aware of it. Even Authority was aware of it, still nobody has made efforts to implead Contractors as a party in the reference. Besides, Hon'ble High Court has directed Central Government to make a reference about the question of genuineness of the contract between the Authority and the Respondents-Contractors. By that, it means that, the Contractors who were party in the Writ Petition and who were Respondents in that Writ are the Contractors and the Hon'ble High Court expects to decide the nature of the contract of those Contractors as to whether it is genuine, sham, bogus and camouflage as claimed by the Union.

26. This is disputed by the 1st Party by filing exhaustive reply at Exhibit M-18 by raising number of contentions. Amongst them, one of it, is maintainability of the reference and jurisdiction of this Tribunal over the subject-matter. According to Authority, order of reference dated 07-3-2003 made by the Government of India, Ministry of Labour, New Delhi to this Tribunal for adjudication of the industrial dispute specified in the Schedule itself is not tenable. In the reference it is recited that, "Central Government was of the opinion that, an industrial dispute existed between the employers in relation to the Management of the Airport Authority of India and their workmen in respect of the subject-matter specified in the Schedule." According to Authority, Hon'ble High Court in Writ Petition No.279 of 2000 directed the Central Government to make a reference for adjudication is itself defective and Hon'ble High Court cannot pass such an order and Central Government cannot make such a reference. Even wording used by the Division Bench of our Hon'ble High Court in its order dated 16-12-2002 is only reproduce by the Central Government while making a reference. It reveals that, the Central Government has not applied its mind which is required to be applied under Section 10 of the Industrial Disputes Act, 1947. According to Authority Central Government must form an opinion that, there exists industrial dispute and so it can refer to the Tribunal for adjudication. Unless and until opinion is formed by the Central Government under Section 10 of Industrial Disputes Act, 1947 relying on report of conciliation authority formed under Section 10 of Industrial Disputes Act, 1947 to whom aggrieved party ought to have approached and said machinery ought to have applied its mind after hearing both and submit failure report in that

respect to Central Government on it. But here in this case, no such exercise nor attempts have been made by the Union. Union did not approach Labour Commissioner(C). No opportunity was given to the Labour Commissioner(C) to resolve the dispute and see whether Labour Commissioner(C) can resolve it and if not can submit failure report as happens generally. Even no opportunity was given to the Authority to make out its case regarding dispute referred by the Division Bench of the Hon'ble High Court about the subject-matter referred in the Reference. According to Authority the dispute raised by the Union was raised for the first time directly before the Hon'ble High Court and the Hon'ble High Court under Article 226 of the Constitution of India made reference which cannot make a reference. Besides, Central Government had no material before it to satisfy that, an industrial dispute existed between the parties to exercise its powers under Section 10(1) of the Industrial Disputes Act, 1947. Discretion of the Central Government to make an order of reference is dependent on its satisfaction that an industrial dispute either exists or apprehended. The opinion formed by the Government is only on the basis of the directions given by the Hon'ble High Court in Writ Petition No.279 of 2000. In fact it is not the opinion of the Central Government which has formed after taking exercise under Section 10(1) of the Industrial Disputes Act, 1947 as there was no material before the Central Government for coming to the conclusion that, industrial dispute existed which the condition precedent in forming an opinion as contemplated under Section 10(1) of the Industrial Disputes Act, 1947. It has clearly acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947. Hence it is submitted that it is not a reference at all under Section 10(1) of the Industrial Disputes Act, 1947. According to Authority Central Government acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947 and has taken decision only on the basis of the directions issued by the Division Bench of the Hon'ble High Court. Besides, Stand is taken by the Authority that, there should be dispute between the Authority and its employees. Admittedly employees involved in the reference are not at all employees of the 1st Party. Unless and they are employees of the 1st party, they cannot be workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. Since the concerned workmen are not their workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 and its employees, their dispute cannot be called as industrial dispute. As per Section 2(k) of the Industrial Disputes Act, 1947, since none of the concerned workmen are the employees of the Authority and even it is not the case of the Union that, they are employees of the Authority, Union cannot raise dispute on their behalf. Besides it is contended that, the Union has no proper representation to raise this dispute. Not a single permanent employee of Authority support the industrial dispute of the Union. Since basically it is not the dispute of the employees of the

Authority, the dispute referred here for adjudication cannot be treated as, an "industrial dispute" and this Tribunal cannot decide it. It is also stated by the Authority that Union must show that, the industrial dispute is espoused by the sufficient number of employees who are members of the Union and there is support of substantial employees of the Authority or is supported by proper number of permanent employees of the 1st party. According to Authority, not a single employee of the Authority has supported the dispute. Even it is not shown that, who has supported the dispute, how many supports the dispute and whether they are members of the Union? Neither any list of the members of the Union is produced nor copy of resolution passed in the meeting of the Union is produced to show that, a particular number of workers are supporting the dispute. It is further stated that, Union can raise dispute on issue of Notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act prohibiting employment of contract labourers or otherwise as laid down in Clause (5) of para 122 of the judgment passed by the Apex Court in case of Steel Authority of India Ltd. vs National Union Water Front Workers published in 2001 III CLR 349 SC. However, there was decision of Government of India to prohibit employment of Contract labourers in the said works. Hence Authority filed Writ Petition in Hon'ble Delhi High Court. In that Hon'ble Delhi High Court while deciding Writ Petition No.6540 of 1999 by its order dated 22-11-2001 gave the liberty to the parties to approach the Central Government, in accordance with the law, for reconsideration of the matter on that point, in view of the subsequent decision of the Apex Court. According to the Authority considering this suggestion, representation was made to the Government of India, relating to the wages payable to the Contract Labourers who in turn indicated that, the circular dated 16-11-1999 relating to the wages payable to the contract labourers be treated as withdrawn observing that, it had no power to make such recommendations under the provisions of the Contract Labour Act and Central Rules and such type of instructions were issued by the Under Secretary to the Government of India, Ministry of Labour, New Delhi to the General Manager, Labour Commissioner, Delhi. On that Airport Employees Federation of India, Kerala filed Letters Patent Appeal in Delhi High Court against the said judgment and order dated 22-11-2001 of the Hon'ble Delhi High Court which was numbered as LPA No. 530 of 2002 in CPW No.6540 of 1999. On that, the Division Bench of the Delhi High Court passed an order dated 24-7-2002 observing that, there were no merits. According to Authority, Tribunal cannot decide whether the contract labour in any establishment should be continued/abolished or not. It is the prerogative of the Government of India to consider and decide said point. It is submitted that, this Tribunal has no jurisdiction and this Tribunal cannot decide whether employees working under contract labour can continue in the establishment of the Authority or not. According to

Authority, since employees involved in the reference are not the employees of the Authority they cannot be represented through this Union. It is also contended that, since the Central Government acted in clear contravention of Section 10(1) of the Industrial Disputes Act, 1947 and had taken decision only on the basis of the directions of the Division Bench of Hon'ble Bombay High Court made a reference, without application of mind and without following the procedure as laid down under Section 10(1) of the Industrial Disputes Act, 1947 does not require to consider and deserve to reject.

27. So on the basis of these vital contentions we have to decide this issue as a preliminary issue or as a main issue which goes to the root of the case as well help in deciding the powers of this Tribunal.

28. As far as jurisdiction of this Tribunal is concerned we have to see, what is the subject matter of the reference?

Subject matter of the reference is :

- "1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?
2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?
3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

As per subject matter in the reference, Government of India, Ministry of Labour, New Delhi, directed this Tribunal to see whether contract between Airport Authority of India and respective contractors is sham, bogus and camouflage to deprive the workers concerned in the reference and to see whether employees involved in the reference can be declared as permanent employees of Authority and what benefits can be given to them. So as to a subject matter referred in the reference, is the subject matter regarding status of the employees involved in the reference who are admittedly working for the Authority. In this reference Government of India, Ministry of Labour, New Delhi, did not refer to see whether, employees of the contractors can be utilized in the establishment of the Authority. This Tribunal is not supposed to decide whether there is prohibition of the employment of the contract labour and it is just and proper, as presumed by the Authority's (Government). This Court is not asked to decide whether Contract Labour can be prohibited or otherwise in the establishment of the Authority? Definitely it is neither prerogative of this Tribunal nor subject matter of the reference to decide whether contract labour can be used in Authority since it is not within the jurisdiction of this Tribunal to decide that aspect and it is not even asked by

the Central Government to this Tribunal to decide that point. Before this Tribunal, Authority has raised the question of locus standi of the Government of India, Labour Ministry. Presuming that Central Government ask this Tribunal to decide whether contract labour can be used in Authority which did not ask this Tribunal to decide. However, in my considered view the question of non-abolition of labour contract or abolition of contract labour in Authority is not raised by Central Government nor ask this Tribunal to decide whether abolition of contract labour is just and legal?

29. The contention of the 1st Party Authority is that is made mechanically by Government of India, Ministry of Labour, New Delhi and it has neither discussed on the demand of the Union nor case of the Authority or it is there was no material before Government to form its opinion either to send the reference or not. Besides, it is ground of the Authority that, since provisions of Industrial Disputes Act, 1947 are not followed, Hon'ble High Court cannot ask Central Government to send reference to this Tribunal. For that if we peruse the order of the Hon'ble High Court which is annexed by the Union with its Statement of Claim. In said order while making reference Hon'ble Division referred judgment of Apex Court in Steel Authority of India, page 122 (1)(a)(2) para 6 and after making reference of the order in Writ Petition No.917 of 1999 dated 9-10-2001 more precisely referring para 26 of it (iii) and para 28 of it Hon'ble High Court order to make a reference to the Government of India for sending reference to this Tribunal for adjudication. The wording of the reference is

- "1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?
2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?
3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

In the said order the Hon'ble High Court says, the position of appropriate Government as the Central Government which was agreed to by both. Here at this juncture the case made out by the Union and Authority cannot challenge the decision of making reference of Hon'ble High Court since it is agreed to by both. Reference has no meaning. Wording of the order clearly that both had agreed for the appropriate Government as the Central Government and not for making reference or for any other purpose. Besides, Hon'ble High Court in its order (para 11) points open stating that

"All contentions of the parties are kept open to be agitated before the Industrial Tribunal."

That means, all points which are connected with the subject matter of the reference are kept open by the Hon'ble High Court and on the basis of that Authority has challenged the decision of the Hon'ble High Court before this Tribunal of making reference. But Authority cannot challenge the decision of Hon'ble High Court of making of reference to the Tribunal before this Tribunal. If at all the Authority was not happy with the order of the Hon'ble High Court, it ought to have approached the superior Court on the decision of making reference by the Hon'ble High Court to this Tribunal. But according to me Authority has decided to challenge said which in my opinion is estopped or cannot ask this Tribunal to decide the decision of the Hon'ble High Court in asking Central Government to make a reference to this Tribunal. So on that count this Court cannot make any comment about decision of reference and it can not set aside and the subject matter sent by the Government of India, Ministry of Labour, New Delhi. Another point raised by the Authority that, Central Government did not apply its mind which was expected under Section 10 of the Industrial Disputes Act, 1947 to make a reference. It is also contended by the Authority that, Union cannot directly approach to High Court and pray to make a reference as happened in this case and cited decision of Gujarat Electricity Board vs. Hind Mazdoor Sabha reported in 1995(87) FJR p.267 SC where reference was made on the joint application of the parties. Authority contended that, Union directly cannot approach Hon'ble High Court and pray to make a reference which is not just and proper. According to Authority Union cannot raise for the first time dispute directly in High Court under Article 136 of the Constitution of India and Hon'ble High Court cannot send it unless provisions of Industrial Disputes Act, 1947 are followed. Again here when Hon'ble High Court has decided to make a reference and when Central Government, Labour Ministry, New Delhi, has made it in my considered view this Tribunal cannot go into that aspect and consider the question raised by the Authority about making reference by Central Government as per the directions of the Hon'ble High Court. If at all Authority was not happy with the decision of the Hon'ble High Court or decision taken by Central Government of making reference, it ought to have approached Apex Court as happened in the case of Gujarat Electricity Board vs. Hind Mazdoor Sabha (supra). Definitely order passed by the Hon'ble High Court is binding to all. It mean that, by that, this Tribunal cannot consider the grievances of the Authority on this point and cannot quash and set aside the reference on that ground alone. According to me reference sent by the Government of India, Ministry of Labour, New Delhi, under directions given by the Hon'ble High Court when is not disturbed by any of the orders of the Superior Court of the Hon'ble High Court, I have to observe that, reference is maintainable in the present form and not bad in law.

Authority has challenged the reference on number of other grounds including on ground that, Union has no proper representation. The reference does not comply with the provisions of Section 10(1) of the Industrial Disputes Act, 1947. According to Authority, reference is nonest. Dispute is not between the Authority and its employees which is expected as per Section 2(k) of the Industrial Disputes Act, 1947. According to Authority Section 2(k) of the Industrial Disputes Act, 1947 covers disputes or differences between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. According to me if we read the definition of Section 2(K) it reveals that:

“Section 2(k): “Industrial Dispute” means, any dispute or difference between employers & employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

No doubt 1st portion of the definition covers any dispute or differences between employers and employers, or between employers and workmen or between workmen and workmen. It is nowhere stated that, dispute must be between employer and its workmen as tried to convince by the 1st Party's Advocate Mr. Patil. On number of occasions Ld. Advocate for Authority Mr. Patil referred this definition (i.e. Section 2(k) of the Industrial Disputes Act, 1947 and submitted that since it is not a dispute between the Authority and its Workmen or it is not supported by the workmen of the Authority it cannot be called as industrial dispute. Even in Written Statement he spent number of pages on it saying that, since it is not a dispute between the Authority and its workmen, it cannot be called industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947. But according to me last portion of the definition which is important and which reveals that, dispute must be of employer and its workmen. At the cost repetition last portion of the definition which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person. At the most Union has to show that employees involved in the reference are covered under the definition of employee. The evidence brought on record and stand taken reveals that, employees involved in reference are working with the First Party. No doubt Authority is denying their status as its employees. But admittedly they are working for Authority is fact. Nature of their relation will be decided in due course. Besides admittedly employees in the reference are working for the 1st Party. Authority is not disputing it and admitting that, they are working for authority but as contract workers. But the fact is that, they are working for the Authority. It is the case

of the Authority that, they are working through Contractors. Hon'ble High Court directed the Central Government to send the reference to this Tribunal for adjudication asking this Tribunal to decide, "whether contract between the Airport Authority of India and the Respondents Contractors is sham and bogus?" Even on the point of, designation of "Respondents-Contractors" Ld. Advocate for the Authority submit that, Contractors are not made party in the reference and as such reference is bad for non-joinder of necessary party. But it is important to note that, Hon'ble High Court has asked Central Government to make reference using word "regarding contract between Respondents-Contractors and Authority". In the reference there is no status to any party as respondents as worded in the reference. In the reference there is status to the parties as 1st Party and the 2nd Party. So if we apply the analogy pointed out by the Authorities Advocate that, Respondents/Contractors are not made party in the reference has no meaning, as it is not expected by Hon'ble High Court to make Contractors as party in the reference since they were already respondent in Writ Petition No. 279 of 2000. Besides it is not the case of the Authority that there were no contractors as a party in the Writ Petition and Hon'ble High Court asked the Central Government to make a reference regarding that contract which Union claim as sham, bogus and camouflage. This Court has to decide only whether the said contracts, which are referred in the reference and which were before the Hon'ble High Court in Writ Petition No. 279 of 2000 while making reference is sham and bogus?

30. Authority has made much capital of the proper representation by the members of the Union for making reference relying on citations published in 1961 11 L.J. page 436 SC while deciding the case of Bombay Union of Journalists vs. The "Hindu" Bombay. He also refers to the citation published in 1958 11 L.J. page 500 SC in case of Workman of Dimakuchi Tea Estate vs. Dimakuch Tea Estate and citation published in 1970 11 L.J. page 132 SC in case of Workmen of Indian Express Newspaper Pvt. Ltd. vs. the Management of Indian Express Newspaper Pvt. Ltd. as well as citation published in 1965 11 L.J. page 95 in case of Nellai Cotton Mills vs Labour Court., Madurai. He also referred citations published in 2005 11 L.J. page 850 of Guwahati High Court in deciding Indian Oil Corp. Ltd. vs. C.G.T.I. Guwahati and citation published in 1977 11 L.J. p.377 in deciding case of National Asphalt Products Construction Co. vs. N.M. Kothari. In all these citations no specific yard stick is laid on the number of employees which is expected to support to espouse the cause to count for to make a reference or to pass the resolution to make reference who are on the membership of the Union. Even no any provision is pointed out of Industrial Dispute, 1947 to show how much numbers of members are required to pass such resolution which is legal and just which permits the Union to make reference. Here employees who are involved in the

reference says that they are the members of the Union. It is to be noted that their status is not challenged by the Authority saying that, they are not members of the Union and when Union represents them one has to take it in the liberal way to say that, they have power to ask the Union to fight for them as they are of weaker section. The Authority has not shown any provision where specific number of the members of the union is expected which required to support to such a resolution to make a reference. Cases referred by the Authority's Advocate shows that, even a member of the Union can even make reference as happened in case of Workmen of Indian Express. 1970 11 L.J. page 132 (137) SC. So there no specific number is required to support the resolution empowering the Union to make reference. According to me for want of support of particular number of workmen members of the Union, the Union can not be restrained in espousing the cause and make a reference.

31. On the basis of the lengthy pleadings of both and on the strength of application given by 1st Party dated 5-2-2008 issues which were framed at Exhibit 65 were recasted at Exhibit 81. With number of contentions of the, 1st Party it has taken contention that, this Reference is not maintainable since this Tribunal has no jurisdiction. Instead of framing separate Issue on that on each count I framed issue in the following form which reads as follows.

"Is reference bad in law?"

which will cover maintainability of the reference as well as jurisdiction of this Tribunal over the subject-matter. As this Issue goes to the root of the case it is taken first for decision and discussion. So I answer this issue in the affirmative.

ISSUE No. 1:

32) The total work force employed by the 1st Party-employer company consists of permanent employees, casual workers and contract workers details of the concerned workmen have been set out in list annexed, at Annexure I, with the present reference i.e. numbering to 20-9-12-41 are working respectively are working in the Cargo Complex & Import Ware House, Conveyer Belt and Electrical Maintenance. Out of these workmen 20 workmen (i.e. Loaders) are doing the work of loading and unloading of Cargo who are called as Casual Loaders and the remaining workmen of which the first nine are employed as Conveyer Belt Operation and Maintenance workers at Terminal IA and the rest of 12 are employed at Terminal B-B and they are doing the work in connection with electrical maintenance at Division I & II. At present Division II only is in existence. The details of these workmen are set out in detail the list marked at Annexure-I annexed to the Statement of Claim. The work which the concerned workmen are carrying out is the work of regular, permanent and perennial nature. The work which all the concerned workmen are carrying out is the work pertaining to the

integral part of the regular activities of the 1st Party. The duties carried out by the concerned workmen are of such a nature that the same have never been severable from the main activities carried out by the employer at various Airports in India, including the present location in Mumbai. The Mumbai Airport is the largest Airport in India having domestic terminal at Santacruz and International Terminal at Sahar, Mumbai. The services rendered by the workmen, irrespective of their categories, are of most important nature because of the continuous and constant flow of passengers and cargo using the Airport facilities. As far as international passengers are concerned, the nature of duties entrusted to all the workmen, including the workers concerned, is of vital importance, as the international passengers carry on impression about our country based on their views of the Airports. The domestic terminal building has two terminals. As far as Terminal IA is concerned the flights of Indian Airlines and Alliance Air take off and land therefrom whereas from the other terminal which is known as Terminal IB, the flights of Jet Airways, Sahara Airways, etc. i.e. private Airlines take off and land. As far as the activities of the 1st Party employer irrespective of locations where the workmen concerned are working, are concerned the same are interconnected and inter-linked with each other. There is integrality of activities and the nature of duties performed by all the workmen irrespective of their status viz. permanent, casual, temporary, contract labourers etc. cannot be separated from each other.

33. The 2nd Party Union further submitted that, as far as 20 workmen employed at Cargo Complex & Import Warehouse are concerned there is no contract since 1st January, 1993. These workmen are called as Departmental workmen. Their designation is Loaders. They are called as Departmental Casual Loaders. These workmen have been employed at Import Ware House and Cargo Complex and they are being paid wages departmentally, from 1st January, 1993. Though their dates of appointments joining are/were prior to 1st January, 1993, they are being paid their wages departmentally with effect from 1st January, 1993 in terms of the orders passed by the Division Bench of the Hon'ble Bombay High Court on 3rd May, 1991 in Writ Petition No. 1494 of 1998. Such directions were given by the Division Bench of the Hon'ble High Court on 3rd May, 1991. The Cargo complex at Mumbai was commissioned on 13th May, 1977. 1st Party, the Authority, is the custodian of all imported goods and they have further appointed Air India as their ground handling Agents at the Air Cargo Complex. All the imported goods are received by Air India General Handling Agency i.e. (GHA) from the carriers for warehousing with them. The days old uncleared cargo is thereafter transferred to the heavy cargo warehouse of the Authority and import warehouses of the Authority. The latter is situated at the distance of 1.30 kms. Approximately. Only the normal cargo, including the perishable imports, hazardous goods and strong items are subsequently transferred to Air India (GHA). All commercial air cargo

weighing less than 100 kgs and which is lying uncleared at the Air India (GHA) warehouse for more than 10 days is transferred from Cargo Terminal to the 1st Party - Authority's Import warehouse for further handling departmentally. Similarly, all commercial import cargo weighing more than 100 kgs and lying uncleared for more than 14 days are transferred from Air India (GHA) to the Authority's new heavy cargo shed. Union further submitted that at the Import Warehouse the Authority has employed 20 workers as loaders who are directly employed under the Authority, employer, as permanent workmen apart from managerial, supervisory and clerical staff. The concerned workmen have been colloquially levelled and called as contract workers used to perform the same, similar and identical duties, side by side along with the permanent loaders and the nature of work performed by both these sets of workmen was absolutely the same. The Cargo operations at Mumbai Airport include handling of import cargo, export cargo, passenger baggages, ware-house, auction of goods etc. and the imported cargo is broadly divided into Heavy Cargo i.e. packages weighing more than 100 kgs and light cargo below it and is accordingly shifted to heavy flight cargo sheds where parties and agents come and claim their goods. Operations of the loaders at these import light cargo sheds include receiving the goods, stacking/arranging them on racks and forwarding the cargo and to give delivery to the claimants. It is submitted by the Union that, the work of loading the light cargo sheds was carried out by around 120 workmen i.e. permanent loaders of Air India. Prior to 15th November, 2002 Import Light Cargo not claimed by the parties/agents from the sheds for more than 10 days was shifted by the Authority for further handling to the import house which work was carried out by 20 permanent loaders and 21 so called contract loaders of the Authority. These 41 loaders received the 10 days old cargo from Air India at the Import Warehouse, stacked them on racks according to their location, forwarded the cargo and gave delivery to the claimants. After 45 days these goods are taken for auctioning when these loaders transfer the goods to another floor and process them for the same. The work of handling 10 days old light cargo was initially performed by 20 permanent loaders directly employed by the Authority. It is further submitted by the Union that, due to increase in volume of cargo and the resultant increase in the work of loading and related handling work, the 1st Party employer herein i.e. Authority commissioned appointment of 16 extra loaders in 1986. However, instead of appointing permanent loaders the Authority appointed 26 contract workers to work alongwith the regular loaders in the operations. From 1st November, 2002 Authority took over the ground handling work of 22 Airlines from Air India. Thus Authority has a heavy cargo Shed and light cargo Shed in the Cargo Complex for ground handling cargo of these 22 Airlines. However, the work of import light cargo which was carried out by 120 permanent workmen/loaders of Air India is now being contracted out

by the Authority (presently on 30 days temporary contracts) to M/s. Omega Enterprises, who has employed about 120 contract workers to carry out the said work. However, from 1st November, 2002 the 1st Party employer has not shifted 10 days old light cargo to the warehouse. As a result thereof 40 loaders employed by the Authority for shifting and further handling in the import warehouse have been artificially displaced from their work. Union submitted that, though the permanent loaders numbering 20 have been shifted to do other work, they receive their wages, etc. at much higher rates than the workmen i.e. the concerned loaders. As mentioned hereinabove 40 loaders employed by the Authority have been artificially displaced from their work. It is submitted by the Union that, this is totally artificial situation created by the 1st Party employer with mala fide intentions and with a view to create mere paper records against the concerned workmen. It is also submitted by the Union that, the Authority has changed its policy and instead of transferring unclaimed light cargo goods lying in garage for 10 days to the Warehouse for further handling since November, 2002, the unclaimed goods are kept in the light cargo Shed itself for an unlimited period and instead of assigning the work of light cargo handling to the loaders already employed by the Authority it has temporarily contracted out the work of 30 days' contract to one M/s. Omega Enterprises and 120 contract workmen have been employed to carry out these duties of permanent nature. On the other hand 20 permanent workmen and 20 concerned workmen have been deliberately deprived of their work through these illegal, arbitrary and unjustified changes in the service conditions and this has been done with mala fide intentions to defeat their claim for permanency. The nature of duties carried out by concerned workmen is essential and the work of loading and unloading carried out by these workmen is an integral part of the day-to-day activities of the Authority. Authority provides Trolleys and such other equipments which are required for carrying out the duties by the concerned workmen, their attendance is marked by the Authority and the muster-rolls, which are printed in the name of "Air Port Authority of India" are in the possession of the Authority. It is also submitted by the Union that Assistant Cargo Manager Shri Chhada of the Authority supervise the work and control the concerned workmen and in the matter of leave or leaving early they report to the said Assistant Cargo Manager Shri Chhada. Authority also issues entry passes to the said concerned workmen which are valid for one year. From November, 1999 Authority has been deducting the provident fund contributions of the concerned workmen under the heading "C.P.F." and there is no contractor at all in respect of loading and unloading activities carried out by the 20 workmen concerned in the present reference. It is further submitted by the Union that, there are permanent workmen employed by the Authority for doing the same, similar and identical work and they are getting much higher wages under various settlements. The wages, allowances and other terms and conditions of the

permanent workmen are revised periodically and they are getting all the statutory benefits such as bonus, H.R.A., P.F., leave facilities, revision in wages etc. as well as basic wages, V.D.A., C.C.A. and so many other allowances. The permanent workmen are also doing the work of loading and unloading like the 20 workmen concerned in the present reference. They are getting wages 5 or times more than the present set of workmen. Whereas concerned workmen are getting wages at the rate of Rs. 132.20 per day and in case of absenteeism their wages are deducted and even amongst the concerned workmen senior most workman Shri Ashok Salam who is working for just more than 17 years and the Junior workman Shri M.B. Patre who is working since last around 12 years both of them are getting wages at the rate of Rs. 132.20 per day. It is further submitted by the Union that, the services of the concerned workmen are essential and continuing nature has been accepted and admitted by the Dy. General Manager (Cargo) in his letter dated 20th February, 1998. In the said letter it is inter alia stated, "In short, these contract labourers are providing much needed services in coping up with the increased cargo operations." It is submitted by the Union that Authority maintains records in respect of employment of the concerned workmen including payment vouchers, office notes, fax messages of Assistant Cargo Manager etc. etc. Such records clearly reflect that the concerned 20 workmen are doing the work of permanent, regular and perennial nature as the loaders in Cargo Handling and there is no difference at all between their work and the work of the permanent workmen as far as the present set of 20 workmen are concerned who are employed as Loaders and are called as departmental loaders. There is no contractor and the concerned workmen are directly working as Loaders under the 'departmental loaders' and they are entitled to the benefits of permanency from the date they completed continuous employment of 240 days and the action of the Authority in not giving the status, benefits and privileges of permanent workmen to the concerned workmen i.e. Departmental loaders clearly amount to unfair labour practices under items 9, 10 and 13 of Fifth Schedule, read with Section 2 (a) of the Industrial Disputes Act, 1947. It is further submitted by the Union that, the concerned workmen are entitled to the relief of permanency and other consequential reliefs.

34. In this reference Union challenged the status of the contractors and their genuineness claiming that, actually there were no contracts and contractors shown on record by the Authority are sham, bogus and camouflage. Actually there was no role played by the contractor. According to Union employees involved in the reference were directly under the control of the Authority and the officers of the Authority were supervising their work, marking their presence and making the payment. Only they used contractors who are name-lended by making paper arrangement just to deprive the workers to get wages at par with the wages of permanent workers working on the

same post. Even Central Government, Labour Ministry by making reference asked this Court to decide whether said contractors mentioned by the Union in Writ Petition were sham, bogus and camouflage and were utilized by the Authority just to deprive the workers involved in the reference of benefits available to permanent workmen? Against that, case of the Authority is that, they were real contractors, workers involved in the reference were working there though said contractors upto 1992 and contractors like M/s. Vijay & Co., M/s. Girija Enterprises, M/s. Sakpal Bros., M/s. JAC Enterprises, etc. were in picture. After protection was given by the Hon'ble High Court these workers were continued and no contractors came in picture as they did not want to continue the workers involved in the reference as their employees.

35. In this scenario we have to see whether actually there were contractors as alleged by the Authority or there were no contractors and contract as shown on record is just paper arrangement and whether are bogus, sham, camouflage and name-lended? In that respect Authority has produced number of documents with Exhibit M-111 to show that. Besides Authority has produced original documents with list at Exhibit M-88 at Serial No.2, which is an agreement between M/s. Gannon Dunkerley & Co. Ltd. and Authority for the year 2000-01, correspondence made with the said Company and contract with the said Company for extension of contract and copy of conditions of contract. Besides that Authority has produced agreement of 2002-03 between M/s. Delite Enterprises with the Authority and correspondence made by it. Authority has also produced copy of conditions of contract. These are the documents produced by the Authority to show that there were actual contractors and the employees involved in the reference were working through these Contractors. Said is denied by the Union. In these premises burden is on the Authority to show that, actually there were real contracts and they were not only name-lended but actually were working on the field and were get doing work of the contractors from these persons. In that respect no specific case is made out by the Authority. It is stated that, M/s. Delite Enterprises, M/s. Gannon Dunkerley & Co. were the contractors. It is not the case of the Authority that particular persons were looking after the work of these particular contractors by visiting Airport and by supervising the work. In that respect if we go through the evidence of the Authority we find, Authority has led evidence of Shri Shetti Rajnikanth at Exhibit M-199. This fellow in the cross, about the contract states that, he has not verified whether M/s. Gannon Dunkerley & Co. and M/s. Delite Engineers were having valid licences. He admits that, documents produced in the present proceedings did not reflect about any licences of M/s. Gannon Dunkerley & Co. and M/s. Delite Enterprises. He states that, for making payments contractor was taking measurements. He admits that no such measurement sheet is produced to show that, measurement was taken by the

contractor for making payment to the contract workers. He admits that, measurement book is not prepared shift-wise. He states that no permanent workman work at the Terminal IA Conveyor Belt System. According to him entire work is carried out by these 9 workers involved in the reference. He also admits that, even 6 permanent workers work with these 9 workers on Terminal IA. He states that, he has seen M/s. Gannon Dunkerleys and M/s. Delite Enterprises working on the premises of the Authority. He also states that, he contact contractors about work. He also states that, M/s. Gannon Dunkerley were the contractors at Terminal IA where 9 workers involved in the reference were working. He admits that, though there was change in contractors services of the said 9 workers involved in the reference were continued. He states that, he has to instruct Supervisors or contractors to look after work of their workers. He admits that, the supervisor attended General Shift. He states that said work is required to attend throughout the year. He admits that, he has no evidence to show that Sequeira, Enterprises are specialized Agency in that field. He admits that, Authority has no documents to show that workers involved in the reference were supervised by their respective contractors. He admits that, work of Conveyor Belt System never stops. He admits that, he has no personal knowledge about tenders since the said subject does not come under his purview. He states that, he is aware of the number of the contracts after his joining. He admits that, contract is given for work of Terminal IA as well as other work. He states that, he never signs any contract. He admits that, he never gave any instructions to the contractors. He states that, generally contract is given to one company at a time. He admits that, there is no documentary evidence which classifies the work of the Authority which is of perennial nature and which is not of perennial nature. Then witness examined by Management is Mr. Kanwar Kumar Mehata at Exhibit M-101 who in the cross, this witness states that, he speaks about loaders working in Cargo Department. He states that, there was contract upto December, 1992 for loaders for loading and unloading, in between Authority and those contractors. He admits that, thereafter, there was Contractor from 1992. He states that, initially 22 airlines were utilizing that facility. Now there is increase in the airlines who wants that facility. He admits that Omega Enterprises is the contractor for loading and unloading and 20 loaders involved in the reference does not belong to Omega Enterprises. He admits that, staff of the Authority was supervising the work of these 20 loaders involved in the reference. He also states that, their attendance is marked by staff of the Authority. He states that, these 20 loaders are nominated as casual loaders. He admits that, during his period there were no intermediary contractors for these 20 loaders. He states that, contract workers are attending work of these 20 loaders and also said work is attended by permanent loaders of the Authority. He admits that, work

of the said loaders still subsists. Said work was not stopped till Authority was handling cargo after MIAL came in picture, 30 airlines are utilizing this facility. He admits that, he did not receive any complaint about these workers. He admits that, Cargo handling goes on round the clock. He states that, work of 20 loaders is required to work in shifts and in general shift they are supervised by the staff of the Authority. He admits that, permanent loaders are rotated at different timings. He admits that, there is no demarcation in the work of Cargo Department for these 20 loaders and permanent loaders. He admits that, work is allotted on rotation to these loaders in the Cargo department irrespective of their status. He admits that, as per agreement of OMDA dated 4-4-2006 these workers were to work for an year. He admits that he has no personal knowledge about these rules. Then Management examined Vijay Nana Bhosle at Exhibit M-102. In the cross he states that, he is concerned with Conveyor Belt System installed at Terminal II-B and 12 workers involved in the reference. He also deposed about Electrical Maintenance Department of Terminal 2. He admits that, he has seen those 12 workers working there and 13 conveyor belts. He states that, there are 31 employees working there and some of those are on permanent pay roll of the Authority. They are shifted at different places as per the order of the Hon'ble High Court. He admits that, Authority supervise the work as per order of the High Court. He admits that there was no intermediary between these 12 employees and the Authority. He admits that, officers of the Authority were supervising the work of the said workers. He admits that he has no personal knowledge about contentions taken in Para 3 of his affidavit. He admits that these 12 employees involved in the reference are not concerned with M/s. A.P. Morely Pvt. Ltd. He admits that, he has no idea whether Delite Engineers has licence about these 12 employees. He admits that some permanent workers are working with these 12 employees involved in the reference. He is unable to distinguish whether 12 employees involved in the reference have the less or higher qualifications than the permanent employees. He admits that, work of Conveyor Belt System is part of the work of the Authority. He admits that, major work done by these 12 employees is similar to that of permanent employees. He admits that, no documents are produced by the Authority to show that these 12 employees are working under the contract prior to 1944 also. Then Management examined, Dr. Sarada Prasanna Choudhary at Exhibit M-103 who admits that, transfer of Conveyor Belt system from Authority is not intimated to the employees involved in the reference. He admits that, some of the employees are working with MIAL, even after transfer of the Airport. He admits that, officers who deposed in these proceedings are working for MIAL still they are on the roll of the Authority.

36. Besides this evidence, Union has produced documentary evidence with Exhibit U-26 under the title of "Loaders Documents". In the said documents Union has produced security passes, same page of attendance registers, Duty Rotas, copy of wages registers and payment vouchers, calculations of Diwali gift for the year 2005, wage

slips of permanent loaders, overtime wages statement, letters/co-called contract of 1991 and number of other documents. Union has also produced some documents with Exhibit U-27 under the title of Conveyor Belt (IA). In the said documents Union has produced Security passes issued to the workers, letters written by the Authority to Airport Police asking to issue the workers passes, copies of tenders, sample of attendance registers of the workers from 1993, attendance registers, sample of the AAI payment vouchers and number of other documents. Besides Union has produced documents at Exhibit U-28 under the title of "Conveyor Belt - Departmentally workers" workers working at Conveyor Belt System. In the said documents Union has produced Security passes issued to the workers, sample copies of wage register-payment vouchers, roster of permanent workers, doing the same work, etc. etc. This production of documents is objected by the Authority saying that, those are not genuine and those should not be read in evidence alleging that these documents are fabricated. However, no special case is made out by the Authority in what way they are fabricated and what is the nature of the original documents and in what way it has been fabricated. All the documents are on the letter heads of the Authority. Authority is not challenging the letter heads on which the documents are printed. Besides, this the witness of the Union shows that these concerned employees are working for the Authority and just they are shown as the workmen of the contractors which is not correct one.

37. In this case 39 workers are involved out of 39, 20 are from loading and unloading in Cargo Department and of which 9 working on Conveyor Belt System. Whereas 12 are working at Terminal II-B in Electrical Maintenance Department. According to Union services of these workers are required since work is of perennial nature and without attending that work which is attended by these workers Authority cannot run Airport.

38. In these proceedings number of documents are produced by both, viz. Union produced a bunch of documents titled as 'Loaders Documents', with list at Exhibit U-26, Receipts of members of the Union in one envelope at Exhibit U-17. It also produced Membership list at Exhibit-21, copy of the Constitution of Union, Annual Return of the Union, Registration number of Union at Exhibit U-29, copies of the correspondence which took place between Union and the Authority and to the various Departments at Exhibit U-48. Besides that, Union has produced one payment receipt of permanent Loader at Exhibit U-107, Attendance Register and the Constitution of Union and some letters addressed by the Authorities to various Departments with Exhibit U-114, U-118 and U-122. Besides that, the Union has produced documents under the title of Conveyor Belt Workers at IA Exhibit 27 Documents with list at Exhibit 28 under the title of "Conveyor Belt Electrical Maintenance Workers Div.II" with Exhibit 26, some documents are produced by the Union under the title of various documents. Against that, Management has produced number of documents with Exhibit M-25, M-71, M-96, M-100, M-88, M-104. Besides,

Management has produced various documents at Exhibit M-111.

39. Besides, this oral evidence is led by both. Union has examined Shivajirao Mokai at Exhibit U-83, who speaks about workmen involved in the reference, their dates and wages paid to them. He also refers the history of the proceedings and how reference came before this Court. He also describe how cargo is handled and how working of these workers is essential and important to discharge their duties which is essential duty of the Authority. He also states how work is increased and how additional man-power is required to handle said work and coup-up with it. In the cross this witness states that he has evidence to show that he is working with the Authority from 1-6-1986. He states that, he worked with Contractors Gurija Enterprises and then with JAC Enterprises. He further states that he was then with the Authority. He states that, in 2007, 17 Labourers were working. He admits that, last contractor was JAC Enterprises. He states that, Authority has also appointed 19 permanent Loaders. He states that, nature of work of permanent loaders and the work attended by the contract labourers is identical. However, there is difference in wages. He admits that, Union never challenged the nature of the contracts and claimed anywhere to declare the contractors are sham, bogus and camouflage. He admits that Union never approached any Authority and claimed any relief against the said contractors. Then Union examined Agasthya Pingalkasham Agasthya Nair at Exhibit U-84 who also described the nature of work done by these workers and permanent workers. He also tried to throw light on the wages paid to the workers involved in the reference saying that, these workers are paid on daily wages @ Rs.200-300 per day whereas permanent workers are getting Rs.16,000 to Rs.20,000 per month. He also tried to emphasis how important is the work which is attended by the workers and how that work cannot be segregated from the activities of the Authorities. He claims that name-lender contractors were introduced by the Authority to deprive the claim of workers involved in the reference. He also asserts that, the work done by them is crucial of the Authority which cannot be segregated and without that, Authority cannot run Airport. In the cross this witness states that, he is working at Terminal I-A from 2-4-1995. He denies that he is working with contractors M/s. Gannon Dunkerley & Co. He admits that said Company was paying the wages to him. He states that, Union filed complaint against bogus contractors but he is unable to produce copy of it. Then Union examined Saji Nair at Exhibit U-85. He also tried to throw light on the nature of the work attended by the workers and how important work, is done by them which cannot be separated from the main activities of the Authority. He also states, how workers are working at Conveyor Belt. He is speaking about workmen involved in the maintenance of Terminal II. He explains work is done by them at Conveyor Belt and how their duties are important and without that the Authority cannot run the Airport. He also states that, maintenance work is done by the workers involved in the reference which is also stereo-type which is attended by permanent workers on the Conveyor Belt. He

states that, these temporary workers are helping in the maintenance work and they are doing work of maintenance with the help of workers involved in the reference. He admits that, he was working with contractors M/s. Delite Engineers upto 1-11-1994 and from 1-11-1994 at Terminal IIB with the Authority. He states that, the work done by him is of permanent nature and Authority cannot run Airport without work attended by the workmen involved in the reference. Against that the Management, in lieu of examination-in-chief filed an affidavit of Setti Rajnikant at Exhibit M-99, who is Assistant Manager, Electrical and is working with it since 28-1-2006 and prior to that from 2000 as a Junior Engineer. He is on the point of contract workers involved in the reference and the nature of their duties. He gave history of litigation and also states that, what qualifications are required for appointment of the employees on that post. He also speaks about Contractors and way in which Contractors were introduced and were working on the floor of the Authority. He named Contractors like M/s. Gannon Dunkerley & Co., M/s. Sequerra Enterprises, M/s. Delite Engineers, who gave tenders and whose tenders were accepted by the Authority. He speaks much about 9 contract workers who are involved in the reference and states how their work is not important. According to him without their work Authority can run Airport. According to him they were actually working on the floor of the Authority and were supplying the services with the help of these contractors. In the cross this witness admits that, joined Authority in 2000. He states that, there are various steps of Conveyor System which is Departure Conveyor System, Arrival Conveyor System installed in the Terminal building. He claims that, the Conveyor Belt System is owned by the Authority. He admits that, electrical power is required to run the Conveyor Belt System. He states that, the System is run round the clock. According to him 9 workers are working at Terminal IA on Conveyor Belt System prior to 10-7-2002 with M/s. Delite Engineers and then they were working there with other contractors. He states that, tenders were called for before giving the contract to M/s. Delite Engineers and he admits that, he has not verified whether Contractors M/s. Gannon Dunkerley & Co. and M/s. Delite Engineer were having valid licences. He admits that, nobody can enter on the premises of the Authority without valid gate pass and valid entry pass. He admits that, no permanent workers were working in Terminal IA Conveyor Belt. He states that, said work is done by 9 workers involved in the reference. He admits that articles are supplied as per the demand of the workers. He states that, no requisition is required to release the articles. He admits that, 9 workers were working on this Conveyor Belt System. He admits that, services of these 9 workers are continued though Contractors are changed from time and again. He admits that, he has seen these 9 workers working there. He admits that, supervision is done by the Supervisor of the Contractor who supervise the work of these workers. He admits that, no permanent workers are working at Terminal IA from 2-5-2006 and said work is done by 9 workers whose list is enclosed on page 22 of 5-2-2008. Then he admits that, on Terminal IA 5

permanent and 9 contract workers work. He admits that, Conveyor Belt system is one and the same utilized by Terminals i.e. at Terminal II-A, Terminal II-C and Terminal I-B. He admits that, the said work is done through out the year i.e. for 365 days. He admits that, he has no evidence to show who are specialized in the Conveyor Belt System. He admits that, he has no evidence to show that, work was supervised by the contractors. He admits that, he has not seen advertisement displayed by the Authority. He states that, even he has no idea whether names were called from Employment Exchange or by giving advertisement or by inviting applications by giving advertisement. He admits that work of Conveyor Belt System never stops. He admits that, Convey Belt System work at Domestic as well as International Airports is important for smooth movement of passengers baggage. He admits that, he has no personal knowledge about tenders nor since it his work. He admits that, number of contractors have joined after his involvement with the Authority. He states that, said Contractor is given work of Terminal IA and as well as for other work. He admits that, he never gave written or oral report about the supervision of the work of the contract workers. He admits that, normally work of contract is given to one Company at a time. He admits that, the muster roll, attendance for these 9 workers is maintained by the Authority. He also admits that, he has no evidence to show supervision of contractor supervising the work of these workers. Then Management examined Mr. Kanwal Kumar Mehta, at Exhibit M-1/301, who is Senior Manager (Cargo). He is concerned with 21 Loaders whose services are utilized in Cargo handling. He also speaks about affidavit of Shivaji Mokul, filed by union. He states that, Authority has employed 19 permanent workmen as Loaders. He described how cargo is handled. He also states that, when cargo which is not claimed what is the procedure of it. According to him cargo, if remain, beyond 30 days is shifted to cargo tower which is called as "old cargo" and if the cargo is not claimed are auctioned for that services of cargo loaders are required. He states that, Authority took over the ground handling work of 22 airlines from Air India from 3-11-2002. He states that, prior to that Air India was the ground handling agency of cargo. According to him 19 permanent loaders are employed by the Authority. According to him there were 17 contract workers. He states that, 20 contract loaders are working there who are getting minimum wages against that permanent workers who are getting regular payments. He admits that, Authority provides trolleys to carry out the work of loading and unloading of the cargo. He admits that, work of 20 contract loaders is supervised by the contractor. He admits that, 20 contract labourers are reporting to the officer-in-charge whose attendance is marked by the Authority. He admits that, the Authority maintains the record in respect of the employment of the said persons who are called as contract workers. In the cross he admits that, he has no knowledge how loaders are appointed in the cargo department. He admits that, upto December, 1992 there was contract regarding those 20 Loaders but thereafter there is no contract. He admits that 22 Airlines are taking advantage of cargo facilities, handled

by the Authority. There is increase in the work and with the help of 20 loaders which is not sufficient to couple-up with the work. He admits that, there is increase in the work within these 25 years. According to him 19 permanent loaders are working. He states that, these 20 Loaders involved in the reference were initially working with contractors M/s. Omega Enterprises. He admits that, at present work of these 22 workers is supervised by the officers of the Authority and their presence is marked. He admits that, during his tenure there was no intermediary contractor about those 20 loaders. He admits that, work of these 20 workers is continuing. He admits that, at present 30 Airlines are taking benefit of said cargo handled by MIAL. He admits that, he did not receive any complaints about these Loaders involved in reference. He admits that, these 20 loaders are required to work in the general shift. He admits that, he did not come across that any contract is produced in respect of these 20 loaders. When there is increase in work over time is given to these 20 loaders. He also admits that, they work at different locations and they are rotated at different places. He admits that, there is no demarcation in the work of Cargo Department for casual loaders, i.e. these 20 loaders, and permanent loaders. He admits that, work is allotted on rotation. He admits that, Authority levies charges for handling cargo of different Airlines. Then Management examined Mr. Vijaya Nana Bhosale, at Exhibit M 1/102, who speaks about 12 workers working in the Maintenance Department who are called as Wireman, Mechanic and Khalasis. He admits that, these workers are working for many years. Besides that, he speaks about 32 workmen working at Baggage Conveyors System installed at Terminal 2A and 2C. He also speaks about M/s. Morling Pvt. Ltd, and M/s. Interroller, Singapore. He admits that, said workers are working for last many years by virtue of 1st order dated 2-12-1992 and last order dated 16-12-2002 of the Hon'ble Bombay High Court. According to him these contractors were independent and qualified. He states that, upto 1994 there were contractors. In the cross he states that, outsiders cannot speak about Conveyor Belt System. He admits that, the documents produced by the Union under the head of EMD- II B is maintained by the Authority and Engineers of Authority were preparing duty roster of these 12 employees in EMD. He also admits that, the documents at page 50-64 of EMD workers Division-II are signed by the Manager Engineering of Terminal 2. He admits that there is no intermediary between these 12 workmen and Authority. He admits that the Management was looking after these 12 employees, involved in the reference till 3-4-2007. He admits that he has no knowledge about development from 2004. He admits that, 12 employees were attending work of maintenance of street lights, operation of water pump and normal cleaning of the installation. He is not denying that documents pertaining to these 12 employees may be with the Authority. He cannot say whether Defite Engineers was having licences as contractor of these 12 employees. He admits that some permanent worker were working with them. He admits that, these workers were never removed by the Authority between 1994 to 2000. He admits that, the nature

of work of these 12 employees and that of permanent employees is of similar nature but is not exactly the same. He admits that, no documents are produced to show that, these 12 employees were working under the contractor and under the control of contractor. Then Management examined Dr. Sarda Prasanna Choudhry at Exhibit M1/103 who is on technical point. Then Management examined Ashok Kumar Malik, at Exhibit M-1/110 who speaks about the procedure of recruitment.

40. Besides this both demanded documents from each others by filing applications dated 8-1-2008 and 5-2-2008. They also prayed to rely on the copies of the documents produced by them in that context. After hearing both, order was passed on said application on 13-2-2008 observing that, both are aware of the demand of the documents from each other. It was also observed that, they know which documents are demanded by other side and still it is pertinent to note that, most of the documents are not produced by each of them. It was also observed that, since reference is to be disposed off in time schedule given by the Hon'ble High Court, Court did not want to waste its time on it and asked parties to produce the documents. Even my predecessor gave opportunity to both to produce documents which are available with them to avoid inconvenience and delay. Still by these applications dated 8-1-2008 and 5-2-2008 documents were demanded. Considering the application filed by the Union and reply given by the Authority lastly Court passed orders observing that, sufficient opportunity is given to both and still it did not utilized it and produced documents and observed that both to show custody and importance of the documents on which Court will draw inference. Now both have to show that, documents demanded are possessed by otherside and it is custodian of it. If both succeed in showing that, these documents are relevant, important and in custody of other side, Court will draw inference. However, at the stage of final arguments both were heard and number of documents were referred by both of them. Meanwhile Union filed number of agreements of 1998-99, 2000-2002 and Constitution of Union with list at Exhibit U/29. Against that, Management filed number of documents at Exhibit M-1/25, in the form of Xerox copy of the correspondence of forwarding letter as mentioned in the list. Besides, Management filed Xerox copies of a number letters at Exhibit M 1/71, including copy of agreement alleged to have been entered in to between Authority and Contractor, copy of terms and conditions of contract, copy of vouchers, copy of work order etc. Besides, there is one complaint register which is in original form. Said complaint register shows that, the same is attended to by the workers involved in the reference maintained by the officers of the Authority and certified by the officer of the Authority on behalf of the Management i.e. Authority. As far as this original complaint register is concerned and some other documents produced, in the original form by the Union along other documents, Authority objected that type of production saying that, one has to see how these originals are with Union when custody of these original documents ought to have been with the Authority?

Whereas Union's Advocate Shri Kulkarni, replied that, in the Evidence Act source of information or source of document is not material but one has to see what is evidential value it? After all, both have not cited any relevant law or any case law in support of their respective contentions. However, the fact is that original is produced by the Union in a number of forms. Some are on the letter-heads of the Authority. Some are in register form and some by bunch. At the beginning the Authority was denying existence of the documents. Even initially Authority was saying that, Xerox copies of the documents of which original ought to have been with the Authority but are not with it and since Xerox are filed by the Union it must have original of it. Then it contends that, those are fabricated and cannot be relied upon. However, no specific case is made out by the Authorities and pointed out, which document or which portion of the document is fabricated and which copy of the document is not the copy of the original. Even it is not pointed out what is the change made in the documents produced in the Court and what was the original of it? Authorities tried to give number of excuses on it saying that, since these documents are stolen by the Union and Xerox copies are produced, originals of it must be with the Union. In fact it is the Authority who has to produce the originals to show that, Xerox copies are not copies of it which Union have produced. All this was going on between both. From the records it appears that, Union succeeded in obtaining documents from the Authorities. Even it is not denied by the Union. No theft case appears filed by the Authority about alleged theft of documents. Documents which are on the letter head of the Authority which are in Xerox form and since those are not disproved by the Authority that, and thereafter it is not shown that they are fabricated, in my considered View, we have to presume that, the documents brought on record have evidential value and can be relied in the evidence. Union has produced those under the title of loaders documents with list at Exhibit U 26. Then documents concerning to workers working at Conveyor Belt Terminal A is produced with Exhibit U/27. Documents regarding workmen working in the Electrical Maintenance Division are produced with Exhibit U/28. Union also produced some documents at Exhibit U/16, with list at Exhibit U/21 and with the list at Exhibit U/29. It has also produced some documents with list at Exhibit U/48, with list at Exhibit U/106, U/107, U/108, U/109, U/112, and with 118. Most of the documents are on the letter heads of the Authority.

41. This is the evidence led by both in this case in support of their respective cases.

42. No specific case is made out by the Authority by leading evidence that, particular contractor's person supervises the work of particular contractor. Even nobody is examined for contractor to show they were really working with Authority, with these workers. In this situation I find difficult to accept the case of the Authority that, really there were contractors who were working on the floor of the Authority. Besides not a single witness from contractor's side is examined by the Authority to support

its case and to conclude that, there were really contractors and workers involved in the reference were working under them. On the contrary Authority is unable to give name of any of the person who attended for contractors or who supervises work for particular contractor. Initially Authority was saying that, Authority was neither maintaining record of attendance of these workers nor supervising the work of the concerned workmen. But slowly and gradually as case progressed Authority went on admitting that, it has to maintain record to make the payment to comply with the order of the Hon'ble High Court. Besides it goes on admitting that work is supervised by it and Authority has to make payment for the work. Besides, Authority go on admitting that, attendance was recorded as the Authority has to make the payment. Even admissions given by authority in written statement is like this:

".....Authority appointed 26 contract workers to work alongwith the regular loaders in the operation. Authority submitted that, it took over the ground handling work of 22 airlines from Air India from 3-11-2002. The Authority submitted that, it has (i) import warehouse (ii) a heavy cargo shed and (iii) a light cargo shed in the Cargo complex for ground handling cargo for the said 22 airlines and that, the work of import light cargo was earlier carried out by different cargo handling agencies besides Air India. Due to volume of work M/s. Omega Enterprises, Mumbai has been entrusted to carry out the work of handling of import light cargo and part of it is handled by it. Hence the allegations that, the work of import light cargo which was carried out by 120 permanent workmen/loaders of Air India was then being contracted out totally are not correct."

".....It submitted that due to administrative reasons it does not shift 10 days old light cargo to the warehouse and both sets of loaders have been redeployed to make optimum utilization of available work force, following rise of work load; due to handling of parallel cargo operation. They are utilized/deputed on exigencies of services of Cargo department e.g. when work at Import Warehouse reduced due to post PACT Operations, the loaders were redeployed at various locations at Air Cargo Complex; such as permanent loaders were deployed at U.B. Centre; whereas casual loaders were deployed at Export Shed and some of them were retained at Import Warehouse."

"..... Authority submitted that there are only 19 permanent loaders employed by it there are 18 contract loaders on work."

"...It is further submitted that, the concerned workmen receive their wages at a lower rate, since they are not permanent workmen but are protected by the High Court order, pending hearing and final disposal of the matter."

"...Authority reiterated that, on and from 3-11-2002 it does not shift ten days old light cargo to the warehouse for further handling due to administrative reasons but it started shifting recently the unclaimed goods kept in the light cargo shed for an indefinite period and that the work of light cargo handling has been assigned to the contractor

due to the increase in volume of work intermittently involved; which the existing loaders are incapable of handling."

".....M/s. Omega Enterprises has been entrusted with the contractual job assignment. Authority is not aware whether he has employed 120 contract labourers to carry out the said work and the work carried out by the said contract labourers is not of a permanent nature. Authority further submitted that required work to the permanent workmen employed by it as well as to the concerned persons. The concerned workmen cannot claim the benefit of permanency, as they are initially workmen of the Contractor....."

".....120 contract workmen had been employed to carry out those duties of permanent nature and that on the other hand ... Authority submitted that its day to day activities have nothing to do with the work of loading and unloading of cargo, it is therefore, that the work of loading and unloading carried out by those workmen was an integral part of the day-to-day activities of the Authority."

".....After January, 1993 they have been protected by the said orders of the High Court of Bombay and hence, thereafter, the Authority has to do the work of supervision, management and control over their work and hence merely because there is supervision, management and control over their work by virtue of order of the High Court."

"..... The Authority submitted that it engaged M/s. Gannon Dunkerley & Co., M/s. Sequera Enterprises and M/s. Delite Engineers through the tender process."

"... Authority submitted that there are 13 belts at Terminal 2-A and 2C and 33 permanent workmen are maintaining the same round the clock "

"... hence their attendance was certified by the officers of the Authority and the attendance record and the attendance record was forwarded to the Accounts Department for effecting the payment of wages."

"... Authority submitted that the duty carried out by the permanent workmen attached to the Conveyor Belt System is entirely of the specialized nature and the permanent workmen had been trained by the Engineers of M/s. A.P. Morling Pvt. Ltd. to handle the sophisticated and new technology version of the Conveyor Belt System installed at Terminal 1A."

"..... However, the Airport Managerial Personnel check the contractual work; which are being carried out by the contractor, to ascertain whether it is with reference to the specification of the agreement."

"..... The Authority submitted that Operations Department has issued Job Description (Duties and Responsibilities) of the Airport Managers and the functions which are of a general nature; are based on the head-quarter's guidelines; which have been incorporated in ISO manual. Authority submitted that the contracts entered into with the contractors are in accordance with the Rules and Regulations."

So from all this it reveals that there was no contract and admittedly from 1992 onwards there was no contractor. It is to be noted that reference is sent by the Central Government, Ministry of Labour in the year 2003 and record reveals that there was no contractor in picture atleast from 1992 as far as this reference is concerned. When there was no contract and work is done by these workers which is of perennial nature which is equally important to the work done by the permanent workers of the Authority. I have to conclude that, the contracts alleged by the Authority are sham, bogus and camouflage and there was no contractor at all to which the workers involved in the reference were working. So I answer this issue to that effect.

ISSUE NO. 2 & 2A:

43. When Union succeeds in showing that there was no contract and when their work is of permanent and perennial nature and without which Authority cannot run Airports as well as attend the passengers and cargo. It is also not the case of the Authority that there is shortage of work. On the contrary witness of the Authority admits that, there is increase in the work particularly in cargo handling as well as trafficking passengers. When there is increase in work and when without that work running of the Airport will not be successful, in my considered view, one has to declare that the work of the employee at Airport is essential one. Besides, it is not the case of the Authority that workers involved in the reference are not qualified. No specific case is made out, which type of qualifications required for these type of workers working in Electrical Maintenance/Loading & Unloading Department and which qualifications? There is no demarcation to the qualifications to take persons on such posts. Admittedly the workers involved in the reference are working from many years and in some cases from 1986. That position is not challenged by the Authority. When they are working for years together and when work subsists and when there is no shortage of work attended by the workers and when these workers are working with permanent workers against whom no complaint about their work is there and where there is no specific qualifications spelled or no particular duties are distinguished which work is to be done by the permanent workers or which is to be done by the contract workers. In view, of that set of circumstances, the workers involved in the reference require to be declared as permanent employees.

44. Now, question will arise since when? It is noted that prior to that Union did not approach Deputy Labour Commissioner (Centre) for their grievances and redressal thereof. In fact, they approached directly Hon'ble High Court. Now, till that date there was no any decision prior decision of Hon'ble High Court before passing order in Writ Petition No. 279 of 2000 on 16-12-2002 directed Central Government to make reference and as per that reference is sent on 07-03-2003 here for adjudication in my considered view from the date of the reference i.e. from 07-03-2003 one has to consider that, the employees involved in reference are permanent employees of the Authority. So I answer this issue No.2 and 2A to that effect.

ISSUE No: 3 & 3A:

45. When workers involved in the reference are working at par with permanent employees involved in the reference and are doing the work of permanent employees it is to be noted that permanent employees are getting much higher salary than those contract workers. Salary of permanent workers is around Rs. 22,000 as against that the salary of contract workers working on that post are getting minimum wages though they are doing similar type of work at par with the permanent employees. When permanent employees are getting that much salary and when contract workers are not getting at par with them in my view they should get it on the principle of equal pay for equal work with permanent employees. In my considered view, they are entitled for benefits as permanent employees.

46. Again question will arise since which date? As stated above till reference is sent for adjudication there was no order about the workmen involved in the reference. By virtue of directions given by the Hon'ble High Court in Writ Petition No. 279 of 2000 when reference is sent for adjudication by Central Government on 07-03-2003 in my considered view from the date of the reference sent by the Central Government, Ministry of Labour workers involved in the reference are entitled to get benefits at par with the permanent employees of the Authority. So accordingly I answer this Issue.

ISSUES NOS. 4 TO 6A:

47. Employees involved in the reference are working from years together. They are working continuously. They are doing work like that of permanent loaders or permanent workers working on that post. When they are working but admittedly they are not getting salary at par with permanent workers when that is the situation in my considered view, from the date of the reference they must be equated with permanent employees for all purpose i.e. for wages, for the benefits given to the permanent employees and for the purpose of consequential benefits which are given to the permanent employees from the date of the reference. So accordingly I answer this issue to that effect.

48. In view of the discussions made above I have to conclude that, prayer prayed in the reference require to allow. Hence, the order:

ORDER

(a) Reference is allowed;

(b) The employees involved in the reference be declared as permanent employees of the Authority and Authority is directed to treat these employees as its permanent employees and to pay wages, privileges, consequential benefits at par with the permanent employees of the Authority working on the respective posts from the date of the reference i.e. 7-3-1003;

(c) No order to its costs.

Bombay,
26th May, 2008

A.A. JAD, Presiding Officer

नई दिल्ली, 22 अगस्त, 2008

का.आ. 2653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 276/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2008 को प्राप्त हुआ था।

[सं. एल-12012/21/1997-आई आर (बी-1)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd August, 2008

S.O. 2653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 276/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 21-08-2008.

[No. 1-12012/21/1997-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/276/97

Presiding Officer: Shri C. M. Singh

The President,

Central Bank Employees Union,

365, Saket Nagar,

Indore

... Workmen/Union

VERSUS

The Zonal Manager,

Central Bank of India, Plot No. 4,

Shikharvarta Building,

Indira Press Complex,

Habibganj,

Bhopal

... Management

AWARD

Passed on this 4th day of August, 2008

1. The Government of India, Ministry of Labour vide its Notification No. 1-12012/21/97/IR (B-II) dated 22/26-9-97 has referred the following dispute for adjudication by this tribunal :

SCHEDULE

"Whether the action of the management of Central Bank of India, Bhopal in terminating the service of Sh. G. Gopalrao, Teller, w.e.f. 29-7-92 is legal and justified? If not, to what relief the said workman is entitled?"

2. In this case neither the workman/Union nor the management put in appearance inspite of sufficient service of notice on both of them. No statement of claim has been

filed on behalf of workman/Union. Similarly no WS has been filed on behalf of the management. It appears from the above that the parties have no interest in this reference. Therefore it shall be just and proper to pass no dispute award in this case. No Dispute Award is passed accordingly without any orders as to costs.

3. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 25 अगस्त, 2008

का.आ. 2654.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राजस्थान एटोमिक पावर स्टेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय कोटा के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-8-2008 को प्राप्त हुआ था।

[सं. एल-42012/4/2006-आई आर (डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 25th August, 2008

S.O. 2654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court, Kota as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Rajasthan Atomic Power Station and their workman, which was received by the Central Government on 25-08-2008.

[No. 1-42012/4/2006-IR (DU)]

AJAY KUMAR GAUR, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण, कोटा/राज.

रीटायरीन अधिकारी--श्री बद्रीलाल मोना, आर.एच.जे.एस.

निर्देश/विवाद प्रकरण क्रमांक : औ. न्या.--2/07

दिनांक स्थापित : 3-2-07

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं.

एल-42012/4/2006 [आईआर (डीयू)] दि. 14-6-06

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ)

औद्योगिक विवाद अधिनियम, 1947

मध्य

एम.के. जैन द्वारा श्री एन.के. जैन, प्रेसीडेंट, राज. एटोमिक पावर

श्रमिक संघ, रावतभाटा (कोटा) ।

प्रार्थी श्रमिक

एवं

डिप्टी जनरल मैनेजर (पी एण्ड आईआर) (राज. परमाणु

विजलीघर, रावतभाटा) कोटा ।

अप्रार्थी नियोजक

उपस्थित

नई दिल्ली, 27 अगस्त, 2008

प्रार्थी श्रमिक की ओर से प्रतिनिधि :- एम. के. जैन
(श्रमिक स्वयं)

अप्रार्थी नियोजक की ओर से प्रतिनिधि :- श्री वी.के. जैन एवं
श्री रमेश राठौर

अधिनिर्णय दिनांक : 18-7-08

अधिनिर्णय

भारत सरकार, ग्राम मंत्रालय, नई दिल्ली के आदेश दिनांक 14-6-06 के द्वारा निम्न निर्देश/निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जायेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

"Whether the action of the management of the Rajasthan Atomic Power Station, Rawatbhata, Rajasthan in not extending the benefit of the CSS (Leave) Rules to Shri M.K. Jain, Senior Canteen Asstt. Grade-II is legal and justified? If not, what relief the workman is entitled to and from which date?"

निर्देश/विवाद न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों की सूचना निधिवत् रूप में जारी की गयी।

3. पत्रावली में चास्ते पेश होने क्लेम 4-9-08 नियत थी, किन्तु दि. 4-7-08 को प्रार्थी श्रमिक स्वयं ने उपस्थित होकर प्रार्थना-पत्र प्रस्तुत कर निवेदन किया कि चूंकि उसके व अप्रार्थी नियोजक के मध्य सम्प्रेषित लिखित निर्देश/विवाद में लोक न्यायालय की भावना से राजीनामा सम्पन्न हो गया है और राजीनामे उपरान्त अब कोई विवाद शेष नहीं रहा है, अतः पत्रावली आज ही पेशी में ली जाकर अन्तिम रूप से प्रकरण निस्तारित कर दिया जावे। अप्रार्थी पक्ष ने प्रार्थी के कथन पर कोई आपत्ति प्रकट नहीं करते हुए कथनों पर सहमति प्रकट की है। प्रार्थना-पत्र प्रार्थी के आधार पर पत्रावली पेशी में ली जाकर आगामी तिथि नियत की गयी।

आज पत्रावली का अवलोकन किया गया। चूंकि प्रार्थी श्रमिक के प्रार्थना-पत्रानुसार उसके व अप्रार्थी नियोजक के मध्य लिखित निर्देश/विवाद में लोक न्यायालय की भावना से आपसी समझौता/राजीनामा सम्पन्न हो गया है और अब कोई विवाद शेष नहीं रहा है, अर्थात् सभी विवाद समाप्त हो गये हैं। अतः यह इसके अतिरिक्त किसी अनुतोष का अधिकारी नहीं है। प्रार्थना-पत्र प्रार्थी अनुसार राजीनामे के आधार पर सम्प्रेषित निर्देश/विवाद इसी प्रकार अन्तिम रूप से अधिनिर्णित कर उत्तरित किया जाता है।

बटौरालाल मीना, न्यायाधीश

क.आ. 2655.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 77/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-08-08 को प्राप्त हुआ था।

[सं. एल-40011/10/2002-आई आर (डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2002) of the Central Government Industrial Tribunal cum Labour Court, Bhubaneswar, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Department of Posts, and their workman, which was received by the Central Government on 27-08-2008.

[No. L-40011/10/2002-IR (DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT
BHUBANESWAR**

Present :

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Industrial Dispute Case No. 77/2002

Date of Passing Award—11th July 2008

BETWEEN

The Management of (1)
The Post Master General, Deptt. of Posts,
Berhampur (Orissa).

(2) The Senior Supdt. of Posts Offices,
Deptt. of Posts, Koraput Division, Jeypore,
Koraput.

... 1st Party-Managements.

(And)

Their Workman, Smt. Suchitra Behera,
W/o Shri Santosh Kumar Pattnaik,
At./Po. Kendar, Via. OMP Line SO,
Dist. Koraput-764 021. ... 2nd Party-Workman

APPEARANCES

Shri P.N. Pal, ... For the 1st Party-
Sr. Supdt. of Post Offices Management No. 1 & 2.

Smt. Suchitra Behera. ... For Herself-the 2nd
Party-Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-40011/10/2002 JK (DU), dated 5-09-2002.

“Whether the action of the Management of Department of Post, Government of India in relation to their Senior Superintendent of Post Office, Koraput by terminating the services of Smt. Suchitra Behera, ED BPM, Kendar Branch, with effect from 11-7-2001 instead of regularizing/considering her for any other Branch is legal and justified? If not, what relief the workman is entitled to?”

2. Admittedly one Sanotsh Kumar Pattnaik an Extra Departmental Agent, (EDA) was posted as a E.D. Post Master of Kendar B.O. in account with O.M.P line S.O. under Koraput Head Office of the Postal Department. He was guided by a rule called “Postal & Telegraph Extra Departmental Agent (Conduct & Service) Rules 1964. This rule was substituted by a fresh Rule called “Gramina Dak Seva (Conduct and Employment) Rules, 2001 and accordingly Shri Pattnaik was redesignated as G.D.S.-B.P.M. instead E.D.-B.P.M. of Kendar. Under the above two rules a Branch Post Master was required to arrange his own substitute while availing leave to man the Branch Post Office. Accordingly by suggesting the name of his wife, the disputant, as his substitute Shri Pattnaik availed leave from time to time from 7-4-2000 on-wards. While sanctioning leave the competent authority also approved the engagement of the disputant as a substitute G.D.S.-B.P.M. It is alleged by the disputant that even though in the above process she worked as a G.D.S.-B.P.O substitute continuously for more than 240 days she was terminated illegally by the Management with effect from 11-7-2001 without notice or retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act. It is her further case that instead of terminating her the Management should have regularized her in service considering her continuous engagement and as such the action of the Management should be declared as a nullity.

3. The Management No.1 on the other hand contended that as per the Service Rule and the circular issued, a Gramina Dak Seva Branch Post Master while availing leave is to provide a substitute at his own risk subject to the approval of the competent authority and accordingly the disputant had worked as a substitute during the leave vacancy of her husband Shri S.K. Pattnaik during 7-4-2000 to 10-7-2001. As the disputant had as such worked as a substitute on the arrangements made by her husband she can not be treated as an employee of the Department to claim regularization. More so since she was engaged as a substitute during the leave vacancy period of the original

Branch Post Master her termination does not amounts to retrenchment. The Management No. 2 also filed his counter in the above light and during hearing both the Management further raised a question regarding maintainability of the reference.

4. On the basis of the pleading of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Department of Posts, Government of India in relation to their Senior Superintendent of Post Office, Koraput by terminating the services of Smt. Suchitra Behera, ED BPM, Kendar Branch with effect from 11-7-2001 instead of regularizing/considering her for any other Branch is legal and justified?
3. If not, what relief the workman is entitled to?

5. During hearing the Managements remained absent for which they were set *ex parte* on 17-1-2008. However, the documents filed by the Management along with their counter have been marked as Ext.-A to Ext.-A-21. The disputant on the other hand has examined herself as the sole witness in support of her case. She has also produced some leave sanction orders of original B.P.O. Shri Santosh Kr. Pattnaik and some handing over and taking over charge reports to show that her engagement as a substitute G.D.S.-B.P.M. was duly approved by the competent authority. These documents have been marked as Ext.-1 to 16.

FINDINGS**ISSUE NO. 1, II and III**

6. All these issues are taken up together for the purpose of convenience.

At the very outset it may be stated here that under the Gramina Dak Seva (Conduct & Employment) Rules, 2001 the term “Post Master” has been defined and the said definition is followed by two notes. Under Note No.1 the Extra Departmental Agents appointed under Conduct and Service Rules, 1964 have been treated to have been appointed under the substituted Gramina Dak Seva (Conduct and Employment) Rules, 2001. Under Note No. 2(v) these persons have been characterized as outside the civil service rules of the Union and that, they are not even entitled to claim parity with other servants of the Government. According to the said Rule a G.D.S.-Branch Post Master or his substitute is to discharge duties of responsible nature and their duty is different from the duties which a clerk is supposed to render. Therefore these Post Masters can not be grouped as workmen to draw the benefits of the Industrial Disputes Act and as such their cases are not maintainable under the said Act. Further-

more in the case of Sub-District Inspector of Posts, Vikram-Versus-Theyyam Josepah reported in 1996-II-LLJ 230 a two judge bench of the Hon'ble Supreme Court have held that, function of the Postal Department are part of the sovereign function of the State and therefore it is not an industry within the definition of Section 2(j) of the Industrial Disputes Act. In view of the above the reference is held, even otherwise, not maintainable in its present form, the Gramina Dak Seva Branch Post Masters or their substitute being the employees of the Postal Department.

7. Even considering otherwise that the Postal Departmental (Management No. 1 & 2) is an industry within the definition of the term, the facts narrated by the disputant and the documents produced by both the parties reveal otherwise that the workman is not entitled for any relief under the I. D. Act. The leave sanction orders of the original Branch Post Master Shri Santosh Kumar Pattnaik as produced by the disputant and similar other left out leave sanction orders as produced by the Management show that Shri S.K. Pattnaik remained on leave continuously from month to month from 7-4-2000 to 10-7-2001 (except 11-4-2001 and 12-4-2001) by keeping the disputant (his wife) as his substitute of Kendar B.P.O. and at the same time worked as B.P.O. in charge of another Post Office at Dumuriput. Under the Rules 2001 a Post Master of the above nature is not permitted to take continuous leave for 90 days but in exceptional circumstances he can be allowed to take further leave but not exceeding 180 days and that during such leave period he would not get any pay or other allowances and his said benefits would be paid to his substitute. Therefore, as it seems the engagement of the disputant to work as substitute for more than 240 days was deliberately made so as to provide a handle to her to claim regularization. Further, as such substitute or casual labourers engaged continuously for years have got no right to claim regularization at par with a regular employee and such regularization being only possible in case of a similar provisions in the status/Rules, the disputant is also not otherwise entitled to be regularized due to absence of such a provision in the Rules.

8. Thus in any view of the matter the disputant is not entitled for any relief. More so the present reference is also held not maintainable in its present form for the Managements in question not being an Industry within the definition of the Industrial Disputes Act.

N.K.R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2ND PARTY-WORKMAN

W.W.-

Smt. Suchitra Behera.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2ND PARTY WORKMAN

- Ext-1 - Charge handing over report.
- Ext-2 - Charge handing over report.
- Ext-3 - Charge handing over report on 10-4-2001.
- Ext-4 - Charge handing over report on 12-4-2001.
- Ext-5 - Copy of letter No. 4-239/PF, dated 13-4-2000 of Sr. Supdt. of Post Offices, Koraput Division, Jeypore (K).
- Ext-6 - Copy of letter No. A-239/PF dated 3-5-2001 of Sr. Supdt. of Post Offices, Koraput Division, Jeypore (K).
- Ext-7 - Copy of Circular.
- Ext-8 - Copy of Circular.
- Ext-9 - Copy of Circular.
- Ext-10 - Office order dated 5-4-2000.
- Ext-11 - Office order dated 12-6-2000.
- Ext-12 - Leave sanction order dated 13-4-2000 of S. K. Pattnaik.
- Ext-13 - Leave sanction order dated 5-7-2000 of S.K. Pattnaik.
- Ext-14 - Leave sanction order dated 1-9-2000 of S. K. Pattnaik.
- Ext-15 - Leave sanction order dated 17-10-2000 of S. K. Pattnaik.
- Ext-16 - Leave sanction order dated 2-2-2001 of S. K. Pattnaik.

LIST OF WITNESSES ON BEHALF OF THE 1st PARTY MANAGEMENT

Both the Managements have not examined their Witnesses.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1st PARTY MANAGEMENT

No documents have also been marked by both the Managements.

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 294/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-8-2008 को प्राप्त हुआ था।

[सं. एल-12012/323/1995-आई आर (बी II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2656 :—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 294/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial dispute between the employer in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 27-08-2008.

[No. 1-12012/325/1995-IR (B-II)]

RAHINDER KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
BHUBANESWAR**

Present :

Shri N. K. R. Mohapatra,

Presiding Officer, C.G.I.T.-cum-Labour Court,

Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE No. 294/2001

Date of Passing Award - 15th July, 2008

BETWEEN

The Management the Branch Manager,

Central Bank of India,

At Gopabandhu Chowk, Bhubaneswar.

... 1st Party-Management

And

Their Workman, Shri Alekh Bihari Rout,

At Guapur, P.O. Majlithara,

Via. Banamalipur, Dist. Khurda, Orissa.

... 2nd Party-Workman.

APPEARANCES

Mr. P. C. Rath &

... For the 1st Party

Associates Advocates,

Management.

Mr. B. L. Dasia

... For the 2nd

Advocate, Advocate.

Party- Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 1-12012/325/95-IR(B-II) dated 20-09-1999.

"Whether the action of the Management of Central Bank of India to terminate Sh. Alekh Bihari Rout, Ex-Casual Workman from service and denial of further employment from June, 1991 and non-regularization of his services is justified and legal? If not what relief is the disputant entitled to?"

2. Admittedly, the workman was engaged as a temporary sub-staff on daily wage basis in the establishment of the 1st Party-Management Bank situated

near Gopabandhu Chowk, Bhubaneswar. From month to month he was engaged either as a sub-staff or on other works like cleaning of the bank building and other miscellaneous work. While he was so continuing he was refused employment from June, 1991 without any advance notice or retrenchment compensation. It is alleged by the workman that, by the time he was so terminated he had already worked continuously for 240 days in the preceeding year and as such the termination was bad. On the other hand he took a further stand during trial that during 1991 the Management in order to regularize temporary workers like him issued a circular and also conducted necessary interview of all the temporary workers. That, even though, as per the circular he should have been regularized automatically considering his continuous engagement for more than 240 days in a particular year, the Management asked him to participate in a selection test and ultimately terminated him without regularization. Challenging the above termination, the workman raised an Industrial Disputes and then filed O.J.C. 2995/95 before the Hon'ble High Court when he found the Government not interested to refer his case to the Tribunal. However, on the basis of an order of the Hon'ble Court the Government referred the present dispute for adjudication. It is on record that in 2000 the disputant filed another O.J.C. 2593/2000 for a direction to dispose of his pending representation for regularization. As per the direction of the Hon'ble Court the Management turned down the request for regularization while considering the representation which was the subject-matter of the above O.J.C.

3. Admitting that the workman was engaged from 1987 till June 1991, it is averred by the Management that during the above period the workman was only engaged as and when required against some leave vacancy of a sub-staff as also in some other occasions for cleaning of the office etc. His above engagement not being continuous and as he had not completed 240 days during past 12 months he was terminated without notice or retrenchment compensation in the month of June 1991. Referring to the stand taken by the workman during trial that on the basis of the result of the interview held during 1990-1991 he should have been regularized, the Management during trial came up with the plea that under the circular dated 12-3-1991 a temporary employee working continuously for 240 days in any calendar year between 1-1-1982 to 31-12-1990 was only to be absorbed automatically but since the workman had not worked for such period by the time the Management took up the matter to regularize the temporary employees, he could not be automatically regularized. Therefore, as per the said circular he was called upon to face a qualifying test but he could not be absorbed as his chance did not come within the cut off date while filling up the vacancies with due regard to the reservation policy. It is further contended that the disputant had not secured 9th position in the wait list and as such his allegation that his juniors were regularized ignoring of him

is totally false and baseless. In the above background the Management in nut-shell has alleged that the termination of the workman was not at all bad either way.

4. On the basis of the above pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Central Bank of India to terminate Shri Alekh Bihari Rout, Ex-Casual Workman from service and denial of further employment from June 1991 and non-regularization of his services is justified?
3. To what relief the disputant is entitled?

5. Besides examining himself, the workman has exhibited certain documents marked Ext.- 1 to 9 in support of his case. The Management on the other hand has examined two witnesses and marked Ext.-A and B in support of its case.

FINDINGS

ISSUE No. I

6. There being no substantial challenge from the side of the Management as to the non-maintainability of the reference, the said issue is answered affirmatively holding that the reference is maintainable in its present form.

ISSUE NO. II & III

7. These two issues are taken up together for the purpose of convenience.

Under Section 25-F of the Industrial Disputes Act no workman employed in any industry continuous for not less than one year shall be retrenched by the employer until the workman has been given one month's notice or he has been paid in lieu of such notice wages for the period of notice. In addition to that he is also to be paid necessary retrenchment compensation and the appropriate Government should also be intimated about such retrenchment. Section 25-B sub-section (1) of the Act defines what amounts to continuous service and how it is to be calculated. Sub-Section (2) says where a workman is not in continuous service within the meaning of sub-section (1) he shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve month preceeding the date with reference to which calculation is to be made, has actually worked for not less than 240 days. Thus according to the above, while calculating the continuous period of engagement over a period of 12 months it is not necessarily required that, one should have worked continuously for 240 days. Thus for the purpose of 25-F of the Industrial Disputes Act it is not necessarily to be shown that one had worked continuously without break for a period of 240 days. Rather as per Section

25(B)(2) a workman shall be deemed to have worked continuously for one year if he has worked for a total period of 240 days during the preceeding 12 months. Ext.-1 an official document of the Management shows that during the calendar year of 1989 the workman had worked for 206 days and in addition to that he was allowed to avail holidays for 34 days, bringing the total engagement period to 240 days. Likewise during the calendar year of 1990 he had also worked for 96 days as casual labour and 138 days otherwise for cleaning of branch premises, besides availing 45 days as holidays, bringing his total engagement period to 279 days by end of December 1990. The said period of 279 days being in between June to December 1990, by the time the workman was terminated in June 1991, he should have worked for more than 240 days between June 1990 to June 1991. The Management has of course filed a chart (Ext.-A) showing month-wise and year-wise engagement period. But on comparison of the same with Ext.-1 it is ascertained that the Management has prepared the list of working days of both 1989 and 1990 by excluding the holidays allowed to the workman as also the other period during which he was engaged for cleaning the office during 1990. Since holidays allowed to a worker is also to be counted while calculating his continuous service it is to be held according to Ext.-1 that the workman had worked continuously for 240 days by the time he was terminated in June 1991. As admittedly no advance notice or compensation in lieu thereof has been paid to the workman at the time of such termination, the above action of the Management is hereby held bad under law for non-compliance of Section 25-F of the Industrial Disputes Act.

8. As regards to the other aspects of the case, it is now to be seen as to whether the Management was guilty of not regularizing the workman and whether the workman was terminated to avoid regularization. Banking upon a circular dated 12-3-1991 marked as Ext.-9 it was argued by the workman that since he had already worked for 240 days by end of December 1990, he, according to the above circular, should have been regularized without subjecting him to any test. The Management on the other hand contended that since during the currency period of the circular the workman had not worked for 240 days over a period of 12 months in any of the preceeding years, he is not eligible for automatic regularization as per the circular and therefore, as per the other provisions of the circular he was asked to attend the interview and ultimately terminated when his chance did not reach. As against the same the workman argued that in the qualifying list his position was 9 but in ignorance of the same, some of his juniors such as Sribachha Sahoo and Nara Oram were regularized. In support of said argument the workman drew the attention of the Court to the qualifying list marked Ext.-3/ A. But the very- list indicates that the persons have not been listed merit-wise. After going through the said list and the marks obtained by each candidates it is ascertained that on merit basis the position workman would come much below 9 and

therefore, his stand that his juniors were promoted ignoring him falls to the ground. In such circumstances, the stand taken by the Management that while filling up the vacancy, with due regard to the reservation policy, his chance did not come is only to be believed.

9. As regards the other stand of the workman that he should have regularized automatically without any qualifying test to which he was subjected, the circular marked as Ext.-9 shows that the same was issued on the basis of a settlement between the Bank and All India Central Bank Employees Federation and other recognized majority Union of Award staff. While evolving suitable norms for giving one time opportunities to all those who were engaged as temporary/casual employees on or after 1-1-1982 the said circular was issued. According to Item 3.1 and 3.2 the temporary employees who were put in 240 days up to 31-12-1990 were to be considered for absorption in the available vacancies without any test or interview without insisting for their qualification and age and such regularization were to be made first before resorting the other course of regularizing through interviews of those who had not worked for 240 days. Insofar as the case of the disputant is concerned it is admitted by the Management that he was working as a temporary worker from 1987 till he was terminated in June, 1991. From the discussions made in the previous para it is further crystal clear that as per Ext.-1 the workman had worked for 279 days including 45 admissible holidays by end of December 1990. But since he had rendered such service during May to December 1990 without working from January to April 1990, it was argued by the Management that since the workman had not worked continuously for a period of 12 months ending in December 1990 his case was not considered under Clause 3.1, 3.2 & 3.3 of the above circular. Rather as per the other provisions of the circular he was allowed to participate in the interview. In so far as the above argument of the Management it be pointed out that the term continuous period of 12 months as appearing in the said circular is not to be computed mathematically but it is to be computed liberally as the term "Continuous Service" has been defined under Section 25-B(2) of the Industrial Disputes Act. Since under Clause 25-B(2) a person would be deemed to be in continuous service for a period of one year if he has worked for 240 days during a period of 12 calendar month preceding the date with reference to which calculation is to be made and as per the earlier discussion the workman had worked for more than 240 days during said 12 months of 1990, he should have been absorbed in the immediate available vacancies without any test and interview as per Clause 3.1, 3.2 & 3.3 of the circular marked Ext.-9. The same having not been done, it is therefore held that the Management is guilty of not absorbing him immediately against the available vacancies. Thus in the result, it is held that the action of the Management in terminating the workman is not only bad but his action of terminating him without regularization is

held to be violative of the settlement reached with the Federation.

10. In view of the discussions made above, the Management is directed to absorb the workman immediately as an Award Staff with normal benefits from the date on which others have been regularized as per Clause 3.1, 3.2 and 3.3 of the Circular dated 12-3-1991 (Ext.-9) with compensation (consolidated) of Rs. 50,000 towards back wages and litigation expenses calculated on an average basis.

11. The reference is answered accordingly.

N. K. R. MOHAPATRA, President, Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2nd PARTY WORKMAN

W.W.-1 - Shri Akshy Kumar Rout.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2ND PARTY-WORKMAN

- Ext-1 - Details of working days of the workman.
- Ext-2 - Copy of office circular No. CCE90/91-370, dated 4-10-1990.
- Ext-3 - Copy of Recruitment test for the post of sub-staff held on 24-2-91.
- Ext.-3/A - Panel of casual workers prepared by the Management in 1991.
- Ext-4 - Copy of the order of the Labour Court, Bhubaneswar passed in M.C. No. 2/1996.
- Ext-5 - Copy of the reply of the Management dated 26-9-1994 given to the R.T.C(C), Bhubaneswar.
- Ext-6 - Copy of the Hon'ble High Court in O.J.C. No. 7995/1995.
- Ext-7 - Order of the Hon'ble High Court in O.J.C. No. 2593/2000.
- Ext-8 - Copy of representation of the workman dated 22-7-2000 addressed to the Management in pursuance to the order of the Hon'ble High Court.
- Ext-9 - Copy of the circular issued by the Management for regularization/Absorption of temporary employees.

MARK-X-Copy of the certificate granted by the Branch Manager of the Bank regarding the engagement of the workman.

LIST OF WITNESSES ON BEHALF OF THE 1st PARTY MANAGEMENT

M.W.-1 - Shri Shybi Prasad Nayak.

M.W.-2 - Shri Anis Kumar Chatterjee.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1st PARTY-MANAGEMENT

- Ext-A - Copy of consolidated statement reflecting the number of days the workman has worked in each month during 1988 to 1990.
- Ext-B - Copy of the panel of casual workers.

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 77/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-08 को प्राप्त हुआ था।

[सं. एल-22012/326/2005-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur, as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited, and their workman, which was received by the Central Government on 27-8-2008.

[No. L-22012/326/2005-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. 77 /2006

Date 27.06. 2008.

The Dy. General Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Region Chandmeta, District Chhindwara (M.P.)

.....Party No. 1

Versus

The Chief General Manager,
Western Coalfield Ltd., Pench Area, Parasia, District
Chhindwara (M.P.)

.....Party No. 2

AWARD

The Central Government after satisfying the existence of disputes between The General Secretary, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), Region Chandmeta, District Chhindwara (M. P.), Party No. 1 and The Chief General Manager, Western Coalfield Ltd., Pench Area, Parasia, District Chhindwara (M.P.), Party No. 2 referred the same for adjudication to this Tribunal vide its letter No. L-220 12/326/2005-IR (CM-II) dt. 09-10-2006 under clause (d) of sub section (1) and sub section (2A) of Section 10 of ID Act with the following schedule :

2. "Whether the action of the management of M/s. Western Coalfields Limited in terminating the services of Shri Jalaluddin w.e.f. 31-05-2000 is legal and justified?. If not, to what relief is the workman entitled?"

3. The reference came for hearing on 27-06-2008. The petitioner and his counsel are absent. The counsel for the respondent is present. It seems that on receipt of the order of the appropriate government, the parties were served with the notices. However right from the beginning of the dispute the petitioner did not turn to the Court. It seems that the petitioner has no interest in conducting the case. He has not even filed a Statement of Claim though he was served in the year 2006 only. No reasons to continue the case and adjourn from time to time. The respondent/management appeared and filed its Written Statement. Hence the reference is disposed of for the default of the petitioner and this no dispute Award has been issued.

A. N. YADAV, Presiding Officer

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2658.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 35/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-08 को प्राप्त हुआ था।

[सं. एल-22012/377/1990-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/1992) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workman, which was received by the Central Government on 27-8-2008.

[No. L-22012/377/1990-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/35/92

PRESIDING Officer : Shri C. M. Singh

The General Secretary,
M. P. K. K. M. P. (H.M.S.),
P. O. Junnardeo,
Distt. Chhindwara (M.P.)

Workman/Union

Versus

The Manager,
Nandan Colliery,
P.O.Nandan,
Distt. Chhindwara (MP)

Management

AWARD

Passed on this 13th day of August, 2008

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/377-90-IR (C-II) dated 11-2-92 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Nandan Colliery No.1 WCL, Kanhan Area, in terminating the services of Shri Ramesh S/o Bhangli, D.P.R.T.(No.2481 w.e.f. 6-8-89 is legal and justified? If not, to what relief the workman is entitled to?”

2. The case of workman Shri Ramesh/Union in brief is as follows. That he was a permanent worker. He had fallen ill at his village and was under medical treatment of a village Doctor. He had informed the management by his co-worker and in writing also. After having recovered, he went to resume his duties but he was handed over a letter of dismissal. That he was dismissed for no fault vide letter dated 6-8-89. That he was neither chargesheeted nor any enquiry was conducted against him. Therefore the order of dismissal is illegal. It is prayed that the said order be set aside and workman Shri Ramesh be reinstated with all back wages and benefits.

3. The case of the management in brief is that the workman was appointed as employee of the management on 31-10-83. He was a habitual absentee without information or sanctioned leave. For remaining absent continuously without information and sanctioned leave, he was issued a chargesheet dated 1-3-89. An enquiry was conducted into the charges levelled against him legally and properly following the principles of natural justice. The Enquiry Officer submitted his report with the findings that the charges levelled against the workman are found as proved. On the basis of the findings submitted by the Enquiry Officer, the Competent Authority vide order dated 6-8-89 imposed punishment of dismissal from services on the workman Shri Ramesh.

4. My learned predecessor in office after having heard the parties and going through the evidence on record, recorded his findings on 12-1-86 holding that the Departmental Enquiry is illegal and improper. The said findings of my learned predecessor in office shall form part of the award.

5. My learned predecessor in office fixed a date for evidence of the management

6. Vide order dated 21-7-05 passed on the undersheet of this reference proceeding, the reference proceeded ex parte against the workman.

7. The management for proving the misconduct of the workman filed affidavit of their witness Shri Anil Mishra, then posted as Manager in Nandan Mine No.1 of WCL, Kanhan Area.

8. I have heard Shri A.K.Shashi, Advocate for the management and perused the evidence on record

9. The case of the management is fully established and proved from the uncontroverted and unchallenged affidavit of management's witness Shri Anil Mishra. Therefore the reference deserves to be decided in favour of the management and against the workman Union without any orders as to costs.

10. In view of the above, the reference is decided in favour of the management and against the workman Union without any orders as to costs holding that the action of the management of Nandan Colliery No.1 WCL, Kanhan Area, in terminating the services of Shri Ramesh S/o Bhangli, D. P. R. T. No. 2481 w.e.f. 6-8-89 is legal and justified and consequently the workman is not entitled to any relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2659.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार एम.ई.सी., गज, के प्रबंधक के संघर्ष नियंत्रकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 45-1997) को प्रदायित करती है, जो केन्द्रीय सरकार को 27-8-2008 को प्राप्त हुआ था।

[सं. एल. 22012/358/1995 आठ अगस्त 11 (1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2659. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 27-8-2008.

[No L-22012/358/1995-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/45/97

Presiding Officer : Shri C. M. Singh

The General Secretary,

M. P. K. M. S.,

PO : South Jhagrakhand Colbery,

Distt. Surguja (MP)

.. Workman Union

Versus

The General Manager,

Baikunthapur Area of SECL,

PO: Baikunthapur,

Distt. Surguja (MP)

.. Management

AWARD

Passed on this 13th day of August, 2008

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/158/95-I.R.(C-II) dated 24-2-97 has referred the following dispute for adjudication by this tribunal :

"Whether the demand of the MPKMS (HMS) for regularizing the services of tub-repairing mazdoors of Kalkona colliery of SECL is just and legal? If not, what relief the concerned workmen are entitled to?"

2. Vide order dated 22-3-05 passed on the ordersheet of this reference proceeding, the reference proceeded *exparte* against the workmen/Union. No statement of claim has been filed on behalf of workmen/Union.

3. The case of the management in brief is as follows. That the claimants are not workman in terms of sub-sec(s) of Section-2 of the I.D.Act 1947. That the claimants have not disclosed anything with regard to their employment with the management which is the basic and primary requirement to raise an Industrial Dispute. The Government of India, Ministry of Labour has erred in terming the claimants as workman. The Government of India has further erred by mentioning about the regularisation. Regularisation of services of a person arises only when he is employed after appointment either temporarily or intermittently whereas in the present case, the claimants were never employed by the management. The claimants were not sponsored by the Employment Exchange and as such they could not seek to cut down the constitutional rights of other persons of employment through Employment Exchange and selection by the management of SECL. The management of Kalkona colliery has never engaged contractor on Tub Repairing at Kalkona Workshop. That the contractor workers are not being engaged in the prohibited category. That the order of reference doesnot reflect the particulars of beneficiaries and therefore no adjudication is possible.

4. The management in order to prove their case filed affidavit of there witness Shri Santosh Kumar Pandey, then working as Sr. Personnel Officer in Kalkona Sub Area.

5. I have heard Shri A.K.Shashi, Advocate for the management. I have very carefully gone through the evidence on record.

6. The case of the management is fully established and proved from the unchallenged and uncontroverted affidavit of their witness Shri Santosh Kumar Pandey. Therefore the reference is decided in favour of the management and against the workmen/Union without any orders as to costs holding that the demand of MPKMS (HMS) for regularizing the services of tub-repairing mazdoors of Kalkona colliery of SECL is neither just nor legal and consequently the concerned workmen are not entitled to any relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 137/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2008 को प्राप्त हुआ था।

[सं. एल-22012/188/1997-आई आर(सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.137/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial Dispute between the employers the in relation to the management of SECL, and their workman, which was received by the Central Government on 27-8-2008.

[No. L-22012/188/1997-IR(C-11)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/137/98

Presiding Officer : Shri C. M. Singh

Branch Secretary,

Samyukta Khadan Mazdoor Sangh,

Branch: Banki Colliery,

Post: Banki Mongra,

Distt. Bilaspur (MP)

.....Workman/Union

Versus

Dy. General Manager,

SECL Banki Colliery,

Post: Banki Mongra,

Distt. Bilaspur (MP)

.....Management

AWARD

Passed on this 14th day of August, 2008

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/188/97-IR(C-II) dated 16/17-7-98 has referred the following dispute for adjudication by this tribunal :

"Whether the demand of Samyukta Khadan Mazdoor Sangh, Br. Banki Colliery, Distt. Bilaspur regarding

change of date of birth of Sh. Sajan Singh S/o Sh. Mittu Ram, Mech. Fitter as 3-5-1943 instead of 1-1-1940 by the management of SECL, Banki Colliery, Distt. Bilaspur is justified? If so, to what relief the workman is entitled?"

2. Vide order dated 16-1-07 passed on the ordersheet of this reference proceeding, the reference proceeded *ex parte* against the workman/Union. No statement of claim has been filed on behalf of workman/Union.

3. The case of the management in brief is as follows. Workman Shri Sajan Singh was initially appointed as General Mazdoor w.e.f. 5-3-69 by National Coal Development Corporation. JBCCI-II the Union raised the issue regarding correction of date of birth of employee concerned. After detailed discussion, Implementation Instruction No. 37 was circulated. According to it, the procedure was followed for correction and reviewing the date of birth of the existing employees. The Implementation Instruction No.37 dated 5-2-1981 was revised and revised / modified instruction was issued generally known as II No.76 for determination/verification of the date of birth in respect of existing employee. The NCDC used to maintain the service register of their employees. The said service record bearing the thumb impression of workman wherein the date of birth has been recorded as 1-1-40. In Form-B register, the same date of birth has been recorded. In the year 1981, a notice was displayed on the notice board mentioning therein the date of birth of each workman and it was specifically pointed out that any person having objection may submit his objection within 90 days. In the said notice, the date of birth of the workman was also shown as 1-1-40 but he did not submit any objection within stipulated period. In the year 1987, the excerpts of every employee were circulated and they were asked to give objection if any. In the said excerpt, the date of birth of the workman was shown as 1-1-40. The workman has not submitted any documents under II No.37 & 76 with the management in support of the claim that his date of birth is 3-5-44. He never raised objection during the entire service period against the date of birth. The management has rightly recorded the date of birth of workman in various statutory records as 1-1-40. The workman has rightly retired from service on attaining the age of superannuation of 60 years w.e.f. 1-1-2000.

4. The management in order to prove their case filed affidavit of their witness Shri S. P. Patnayak, then working as Personnel Manager in Banki Colliery.

5. I have heard Shri A. K. Shashi, Advocate learned counsel for the management. I have very carefully gone through the evidence on record.

6. The case of the management is fully established and proved from the uncontroverted and unchallenged affidavit of their witness Shri S.P.Patnayak. Therefore the reference is decided in favour of the management and against the workman/Union without any orders as to costs holding that the demand of Samyukta Khadan Mazdoor Sangh (ATLCC), Bt. Banki Colliery, Distt. Bilaspur regarding change of date of birth of Sh.Sajan Singh S/o Sh.Mittu Ram, Mech. Fitter as 3-5-1943 instead of 1-1-1940 by the management of SECL, Banki Colliery, Distt. Bilaspur is not

justified and consequently the workman is not entitled to any relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C.M. SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2008

का.आ. 2661. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार इन्स्टीट्यूट ऑफ फिजिक्स के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 61/2004) को प्रकाशित करती है, जो केंद्रीय सरकार को 27-8-2008 को प्राप्त हुआ था।

[सं. एल 42012/179/2003-आई आर(सोएम II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th August, 2008

S.O. 2661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.61/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as shown in the Annexure, in the Industrial Dispute between the management of Institute of Physics, and their workman, received by the Central Government on 27-8-2008.

[No.1-42012/179/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri N.K.R. Mohapatra,
Presiding Officer,
C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Industrial Dispute Case No. 61/2004

Date of Passing Award - 8th July 2008

BETWEEN

The Management the Director,
Institute of Physics, Sachivalaya Marg,
Bhubaneswar, Orissa -751 005

.....1st Party-Management.

(And)

Their Workman, Shri Bijay Kumar Sahoo,
P.O. Gadabanikilo, Via - Raporpur,
Distt. Nayagarh, Orissa.

.....2nd Party-Workman.

APPEARANCES

Shri Jagannath Dash, For the 1st Party
Administrative Officer. Management.

Shri Bijay Kumar Sahoo For Himself the 2nd
Party-Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. I-42012/179/2003/IR(CM-II), dated 8-11-2004.

"Whether the action of the Management of Institute of Physics in terminating the services of Shri B.K. Sahoo, Dish Washer is legal and justified? If not, to what relief the workman is entitled?"

2. The facts as narrated by the parties in their Claim Statement and Written Statement are that, the Institute of Physics (the Management) is an Autonomous Research Institute under the Department of Atomic Energy, Government of India engaged in research in theoretical as well as experimental physics. The institute offers research facilities leading to PHD degree and for this scholar have been selected for admission to PHD Degree through entrance selection test. In order to provide tea, snacks and meals to its employees the Management was running a non-statutory canteen engaging different workers on daily rate basis. It is alleged by the workman that on 1-1-1994 he was engaged in the canteen on daily wage basis to clean the utensils (dish washer) and for no reason he was refused employment from 25-4-2002 without any notice or retrenchment compensation as the case may be. As a result he raised an Industrial Disputes culminating the same in the present reference.

3. While challenging the averments of the workman it is contended that the Institute of Physics (the Management) is an autonomous research Institute under the Department of Atomic Energy and it is purely engaged in research in theoretical as well as experimental physics. For the above purposes it has used to offer research facilities leading to PHD degree to scholars being selected through an entrance selection test jointly organized by all the aided institutions of the Department of Atomic Energy and that the Management is not like an University as it neither confers the PHD Degree nor it is governed by University Grants Commission Rules. The institute not being a profit making institutions it can not be called as a commercial organization to bring it within the definition of "Industry" as defined under the Industrial Disputes Act. Coming to the engagement of the workman the Management further contended that to provide tea, snacks and meals to its employees without any subsidy it used to run a non-statutory canteen within its premises for five days in a week and to run such canteen it had engaged cooks and other staffs including the workman in question on daily wage basis. It used to pay the minimum wages as prescribed by the Government and also bonus at the rate fixed by the Government of India for daily wage workers. To clean the utensils as a Dish Washer the workman was engaged on 1-1-1994 but he could not be conferred with temporary status as per the scheme of 1993. As a result he filed a Writ Application before the Hon'ble High Court claiming regularization and thereafter started neglecting in his duties. He also went to the extent of threatening and intimidating the Canteen In-charge and therefore, the

Management being annoyed with his behaviour had to disengage him from 25-4-2002 as a disciplinary measure.

4. On the basis of the pleading of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the Establishment of the Institute of Physics is an Industry within the meaning of the term?
3. Whether the action of the Management of Institute of Physics is justified and proper and legally valid in terminating the service of Shri B.K. Sahoo, Dish Washer?
4. If not, to what relief the workman is entitled?
5. Besides examining himself the workman has examined another person in support of his case. He has also filed certain documents in support of his continuous service. The Management on the other hand has examined a sole witness in support of its case.

FINDINGS**ISSUE NO. 1 AND 2**

6. These two issues are taken up together as they are interlinked.

In its counter it is alleged by the Management that the said Management is a research institute under the Department of Atomic Energy, Government of India and engaged in research in theoretical as well as experimental physics and that for the above purpose it offers research facilities leading to PHD Degree to the scholars selected through entrance examination jointly organized by all the aided institutions of Department of Atomic Energy. It is further contended that the Institute is not like an University because it neither confers the PHD Degree nor it is governed by the University Grant Commission Rules. By advancing the above the Management further contended that the organization in question can not be considered as an Industry under the Industrial Disputes Act. Section 2(J) of the Industrial Disputes Act no doubt excludes any activities of the Government relating to sovereign functions of the Government including all the activities carried on by the Departments of the Central Government dealing with defence research, ATOMIC ENERGY AND SPACE from the definition of Industry. But no evidence worth the name has been adduced by the Management to prove that the Institute in question is purely a research institute under the Department of Atomic Energy, Government of India. While deposing before the Court its witness M.W-1 simply deposed about the engagement of the workman in question but said nothing about the status of the Management. On the other hand the counter filed by the Management shows that it was once guided by a scheme of 1993 relating to conferment of temporary status to the casual labourers. His pleadings further shows that since the workman had not acquired necessary qualification he could not be conferred with such temporary status under the said scheme. In view of the above there is no other go but to hold in respect of engagement of casual labourers that the establishment of the Management is an Industry within the definition of the term under Industrial Disputes Act

though of course it can not be so called in respect of those who are engaged to assist in the research work. Accordingly these two issues are answered affirmatively.

ISSUE NO. III & IV

7. Besides adducing oral evidence the workman has produced several documents marked as Ext.-1 to 11 in order to show that he had worked continuously since 1991 till he was refused employment on 25-4-2002. But since the Management in its counter has admitted the aforesaid facts these documents need no separate consideration. The only question to be examined in the above premises is to whether the Management was justified in terminating the services of the workman without notice/retranchment compensation. In this context the Management Witness No. 1 has deposed that, during his tenure as Manager of the Canteen the workman repeatedly refused to clean the utensils and plates and that on his reporting the matter to the higher authority on 18-4-2002 the workman challenged him on the road on 23-4-2002 threatening to do away with his life. He also went to the extent of saying that he would blast the institution and do all other kalankotes if required. The witness further says that on being so threatened by the workman he had to report again to the authority on 23-4-2002 following which the workman was called upon for a confrontation and then he was refused employment from 25-4-2002 on administrative grounds. The evidence of the witness further shows that while refusing employment to the workman he was not paid any retranchment compensation or any advance notice as required under section 25-F of the Industrial Disputes Act.

8. It is the admitted case of the Management that the workman was engaged on a daily rated basis to work in a non-staffary canteen. Ext.-2 indicates that besides the workman many others were also engaged on daily rated basis in different nature of jobs and they were also being paid the minimum wages as prescribed by the Government from time to time. Under section 2(100) of the Industrial Disputes Act termination of a workman for whatsoever reason would amount to retranchment but if such termination is made as a measure of punishment by way of disciplinary action the same would not amount to retranchment. In the instant case it is the consistent stand of the Management that being annoyed with the unruly behaviour of the workman he was terminated on administrative ground. But since by then the workman had already worked continuously for more than 240 days in the preceeding year the Management should not have terminated him without resorting to provisions of section 25-F of the Industrial Disputes Act and as such the said action of the Management is held to be bad under law.

9. Coming to the relief to which the workman is entitled to, the evidence of the workman shows that while he was in service he was offered with an opportunity to face an interview for the post of Helper-A but he could not come out successful and that thereafter he had filed C.O.P.C. 135-10 2000 before the Hon'ble Court claiming his regularization and pending disposal of the same he was terminated for his erratic attitude towards the Management. Under these premises no useful purpose would be served

if the workman is ordered to be reinstated in service as in such an eventualities neither the Management nor the workman can have smooth sailing. Therefore, if a lumpsum amount is paid to the workman as compensation in lieu of his reinstatement and back wages the same would perhaps meet the ends of justice. Accordingly the Management is directed to pay a compensation of Rs. 20,000/- to the workman in lieu of reinstatement and back wages.

10. Reference is answered accordingly.

N. K. R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2nd PARTY-WORKMAN.

W.W.-1 - Shri Bijaya Kumar Saha

W.W.-2 - Shri Dayanidhi Mohapatra.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2nd PARTY-WORKMAN.

Ext.-1-Copy of the salary 1991 statement from 1/1991 to 4/1992

Ext.-2-Copy of office order dated 29-11-1996

Ext.-3-Copy of Bonus statement for the year 1995-96, 96-97 & 1997-98.

Ext.-4-Copy of certificate of service dated 8-9-1998

Ext.-4/1-Copy of certificate of service dated 12-11-1998.

Ext.-4/2-Copy of certificate of Service dated 21-5-1999.

Ext.-4/3-Copy of Certificate of Service dated 27-5-2000

Ext.-5-Copy of Sports Certificate

Ext.-6-Copy of letter for interview.

Ext.-7-Copy of Muster Roll Roll.

Ext.-7/1-Copy of Muster Roll Roll

Ext.-7/2-Copy of Muster Roll Roll.

Ext.-7/3-Copy of Muster Roll Roll

Ext.-7/4-Copy of Muster Roll Roll.

Ext.-8-Copy of application dated 30-1-2002 sent to the Director, Institute of Physics Bhubaneswar

Ext.-8/1-Copy of application dated 27-11-2002 to the Director, Institute of Physics Bhubaneswar.

Ext.-8/2-Copy of Postal Receipt dated 27-11-2002

Ext.-9-Copy of Advocate Notice dated 1-6-2002

Ext.-10-Copy of Annual Chess Tournament

Ext.-10/1-Copy of Carrom Stick's Tournament.

Ext.-10/2-Copy of playing card 29 points match

Ext.-11-Copy of L.D. letter date 31-1-2003 to the R.L.C. (C), BBSR

LIST OF WITNESSES ON BEHALF OF THE 1st PARTY-MANAGEMENT

M.W.-1 - Shri Abhiram Sahoo

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1st PARTY-MANAGEMENT

The 1st Party-Management has not exhibited any documents.

नई दिल्ली, 28 अगस्त, 2008

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :

का.आ. 2662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ त्रवन्कोर के प्रबंधन के संबद्ध विभागों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एरनाकुलम के पंचाट (संदर्भ संख्या 230/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2008 को प्राप्त हुआ था :

[सं. एल. 12011/291/1997-आई आर (बी-1)]

बी. के. मनचन्दा, अनुष्ठाण अधिकारी

New Delhi, the 28th August, 2008

S.O. 2662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 230/2006) of Industrial Tribunal-cum-Labour Court Ernakulam as shown in the Annexure in the Industrial dispute between the management of State Bank of Travancore, and their workman, received by the Central Government on 28-8-2008.

[No 1-12011/291/1997-IR(B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

**Present : Shri P. L. Norbert, B.A., LL.B, Presiding
Officer**

(Friday the 23rd day of May 2008/2nd Jaishra 1930)

I.D. 230/2006(I.D. 38/1998 of Labour Court, Ernakulam)

Workman : S Shankar, No. 9,
Chandra Illam, Alwar Kurichi,
Thrunelveli Distric,
Tamil Nadu - 678 001.

By Adv. Sri. Ashok B. Shenoy

Management : The Deputy General Manager,
State Bank of Travancore,
Region - II, Zonal Office,
Panampilly Nagar,
Kochi - 682 036.

By Adv. Vinod Chandran.

This case coming up for hearing on 19-5-2008, this Tribunal-cum-Labour Court on 23-5-2008 passed the following.

"Whether the action of the management of State Bank of Travancore (Zonal Office), Cochin in terminating the services of Shri. S. Shankar, Cashier in charge of S.B.T. Rajkumari Branch, Idukki Distt. with effect from 18-12-94 is legal and justified? If not to what relief the workman is entitled?"

2. The facts of the case in brief are as follows: Shri. S. Shankar joined the service of State Bank of Travancore at Konni branch on 29-12-1984 as Cashier/Clerk. In 1993 he was transferred to Rajkumari branch. For unauthorized absence from 3-8-1994 and for not reporting for duty within 30 days as directed by the management his service was terminated w.e.f. 18-12-1994. The workman challenges the termination on the ground that it is in violation of the Bipartite Settlement.

3. According to the worker he had applied for leave on medical ground with a medical certificate on 8-12-94 for the period from 3-8-1994 to 14-1-1995. But the bank disregarding the request for leave issued a notice alleging that the worker was ret. i.e. unauthorisedly absent and without intimation to the bank. The workman was unable to report for duty as he was not keeping well and was under treatment. He had not abandoned the job. He was retrenched without compensation. He is from a poor family of Schedule Tribe consisting of parents, wife and a child as dependants. He is entitled to be re-instated with all consequential benefits.

4. According to the management the workman was a habitual absentee. For unauthorized absence he was punished once with stoppage of one increment with cumulative effect. On another occasion for having issued cheques without keeping sufficient balance in the account and consequent dishonour of cheques the workman was warned by the bank. In Rajkumari branch the workman remained absent on many days and lastly from 3-8-1994 onwards. He did not submit leave application. He was directed to report for duty immediately as per letter dated 1-11-1994. There was no response. Hence a notice was set to him to report for duty within 30 days failing which to treat him as having voluntarily retired from service. There was no response yet. Hence on 26-12-1994 an order of termination was issued as per Clause 17(a) of 5th Bipartite Settlement. But he did not report for duty within 30 days nor offered satisfactory explanation. Hence he was treated as having voluntarily retired from service. No enquiry is required as per clause 17(a). The workman is not entitled for re-instatement or any other relief.

5. In the light of the above contentions the following points arise for consideration.

1. Had the workman remained absent continuously and unauthorisedly for 90 days?

2. Is he entitled for re-instatement or retrenchment compensation?

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to W5 series on the side of the workman and MW1 and MW2 and Exts. M1 to M11 on the side of the management.

6. **Point No. 1:** The workman Shri Shankar who was a cashier in Rajkumari branch of S.B.T. admittedly by was absent from duty since 3-8-1994. According to the bank he was a habitual absentee. He remained absent continuously for more than 90 days without intimation. Hence invoking the provisions of Bipartite Settlement he was treated to have voluntarily retired from service. The absence from duty is not disputed by the workman. But according to him he had applied for leave for the period from 3-8-1994 to 14-1-1995.

7. Ext. M7 dated 1-11-1994 is the memo issued to the workman asking him to report for duty within 3 days of the receipt of the memo. Thereafter Ext. M1 notice dated 1-11-1994 was issued to the workman requiring him to report for duty within 30 days of the notice or to offer satisfactory explanation failing which he would be deemed to have voluntarily retired from service on the expiry of the period of notice. This was followed by Ext. M2 order of termination dated 26-12-1994 stating that the workman had failed to report for duty as required in Ext. M1 and hence he was deemed to have voluntarily retired from service on 18-12-1994.

8. However, Ext. W1 is a copy of the leave application dated 8-12-1994 sent by the workman to the management. The application was accompanied by Ext. W1 (a) medical certificate. Ext. W2 is postal receipt dated 8-12-94 of having sent Ext. W1 under certificate of posting. In Ext. M2 termination order the workman had sent Ext. W3 letter stating that he had applied for leave for the period from 3-8-1994 to 7-12-1994 along with medical certificate Ext. W4 (a) and for extension of leave from 8-12-1994 to 31-12-1994 by Ext. W1 along with Ext. W5(a) medical certificate. He had also mentioned in Ext. W3 letter that it was sent under certificate of posting. He had also requested for extension of leave up to 14-1-1995 in Ext. W4 and supported by Ext. W4(a) medical certificate. This was followed by Ext. W4 and W5 series representations to the Managing Director of the bank. Ext. M-10 is a correspondence between branch Manager of Rajkumari branch and Regional Office of the bank dated 17-12-1994 regarding query by the regional office. The Branch Manager reported by Ext. M-10 that the branch had not received any leave application from the workman since 3-8-1994 and that the workman had not reported for duty till 17-12-1994 MW1 the then Branch Manager of Rajkumari branch stated during cross examination that he had sent

Ext. M-10 reply to Regional Office about Ext. W1 leave application claimed to have been sent by the worker and about which the Regional Office had enquired. MW1 admits that the bank is having Leave Register and Inward Register. The leave Register will show the leave applied, sanctioned or rejected and the Inward Register would show the communications received in the bank (MW1 pages 13 & 14). But they are not produced.

9. The question is whether the leave application Ext. W1 dated 8-12-94 was received by the bank or not. The period of 30 days of notice expires by 1-1-1995. Ext. W1 leave application is dated 8-12-1994. If the application was received by the bank it was within time. Ext. W2 is the postal receipt for having sent the leave application under certificate of posting. In the normal course it should have reached the addressee. But the learned counsel for the management argued that article 114 of the Indian Evidence Act. The leave application was sent by registered post with acknowledgement due it cannot be presumed that the management had received the postal article, the argument is not appealing. A postal article sent either by registered post or under certificate of posting is sufficient proof of having sent it to the addressee. As per Section 114 of the Indian Evidence Act the court can presume that the common course of business has been followed in particular cases. Since the workman had produced the postal receipt of having sent the article under certificate of posting it is for the management to rebut the presumption and prove that it was not received by the bank. The best piece of evidence would have been the Inward Register and the Leave Register. However they are not before the court. The workman by Ext. W3 dated 13-1-1995 had re-iterated his stand that he had applied for leave with medical certificate on 8-12-1994 and the application was sent under certificate of posting. Still the bank did not think it proper to produce the Inward Register and the Leave Register. Hence it has to be presumed in the light of Ext. W2 postal receipt that the leave application was submitted on time.

10. The order of termination dated 26-12-1994 (Ext. M2) was sent on the strength of para 17(a) of 5th Bipartite Settlement dated 10-4-1989. Ext. M-11 is the 5th Bipartite Settlement, Part A, para 17(a)-

"When an employee voluntarily quits himself from work for a period of 90 or more consecutive days without submitting any application for leave or for his sanction or without any leave to his credit or by not having been of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining back, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice stating inter alia the grounds for coming to the conclusion that the employee

has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date for the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service".

Since leave application was already submitted it was not proper for the bank to invoke para 17. Moreover it is submitted by the learned counsel for the workman that it was necessary for the management to have stated in Ext.M2 termination order the reason or basis for having come to the conclusion that the employee had no intention to join duty. It is argued by the learned counsel that since no enquiry is contemplated under para-17(a) the employee has no chance of explaining his position or prove his innocence and hence the provision should be strictly construed. What is stated in Ext.M1 notice and M2 order is that the workman is deemed to have voluntarily retired. Whereas a notice under para 17(a) is required to contain a statement that the worker has no intention to join duty and how the management has drawn such a conclusion. Since the workman had applied for leave there was no occasion for invoking para 17 of the Bipartite Settlement and issuing either a notice or an order of termination. The fact that the past record of the workman is not without blemish is no reason to bypass the provision of Bipartite Settlement. Hence the order of termination is unsustainable.

11. Point No.2 : Since the termination of service is illegal it follows that the workman is entitled for reinstatement with back wages and continuity of service.

In the result an award is passed finding that the action of the management in terminating the service of Sri S. Shankar w.e.f. 18-12-1994 is illegal and unjustified and he is entitled to be reinstated with continuity of service, back wages and other consequential benefits.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 23rd day of May, 2008.

P. L. NORBERT, Presiding Officer

Appendix

Witness for workman

WW 1- 22-12-2002 Shri S. Shankar.

Witness for Management

MW 1- 17-2-2004 Shri V.J.Abraham.

MW2- 17-2-2004 Shri N. Ranjesh.

Exhibits for the workman

W1- 8-12-94 Photostat copy of leave application submitted by Workman.

W1(a)- 4-12-94 Photostat copy of Medical Certificate.

W2- Receipt issued by the Postal authorities for one cover sent under certificate of posting.

W3- 13-1-95 Copy of leave application submitted by workman.

W3(a)- 8-12-94 Photostat copy of Medical Certificate.

W3(b)- 13-1-95 Photostat copy of Medical Certificate.

W4- 9-3-95 Photostat copy of representation submitted by workman.

W4(a)- Postal receipt.

W5 series (6 nos.) Photostat copy of representations submitted by the workman.

Exhibits for the Management

M1- 14-11-94 Copy of letter No. R.M.H.F. 11/336 issued by the Branch Manager to the workman.

M2- 26-12-94 Copy of memo. No. R.M.H.F. Staff-182 issued by the Appointing Authority to the workman.

M3- 7-2-95 Termination letter issued by the Dy. General Manager (F) to the workman.

M3(a)- Postal Acknowledgement Card.

M4- 23-2-94 Copy of memo. No. RM-H.FKM/DPS 179 issued to the workman.

M5- Attendance Register.

M6- 13-7-94 Letter sent by workman to the Regional Manager D(E), State Bank of Travancore

517- **श्री. ए. आर. लक्ष्मी** (का.प्र.स. 100)

M700

M8-

9100

9410-

M-11-

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Present: Mr. Justice

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has prayed for disposal of the matter by passing a "No Dispute" Award, this Tribunal has no other alternative but to dispose of the present reference by passing a "No Dispute" Award. A "No Dispute" Award is accordingly passed the reference is disposed of.

C. P. MISHRA, Presiding Officer

Dated : Kolkata

The 18th August, 2008.

नई दिल्ली, 28 अगस्त, 2008

क्र.आ. 2664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार इन्ड बैंक हाऊसिंग लि. के प्रबंधन के संवद्ध निवोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण चैन्नई के ध्याट (संदर्भ संख्या 16/2006) को प्रकाशित करती है, जो केंद्रीय सरकार को 28-8-08 को प्राप्त हुआ था।

[सं. एल-12012/207/2005-आई आर (बी 1)]

बी. क. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 28th August, 2008

S.O. 2664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2006) of the Central Government Industrial Tribunal-cum-Labour Court Chennai, as shown in the Annexure in the Industrial dispute between the management of Ind Bank Housing Ltd., and their workman, received by the Central Government on 28-08-2008.

[No. 1-12012/207/2005-IR (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 28th September, 2007

Present : K. Jayaraman, Presiding Officer

Industrial Dispute No. 16/2006

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Ind Bank Housing Limited and their Workmen)

BETWEEN

Sri L. Jayakumar : 1st Party/Petitioner

Is

1. The Manager : 2nd Party Respondent
Ind Bank Housing Limited
No. 116, Dr. Radhakrishnan
Salai, Chennai-600004
2. The Manager
Ind Bank Housing Limited
No. 66, Rajaji Salai,
Chennai-600004

APPEARANCE

- For the Petitioner : M/s. K.M. Ramesh
For the Management : M/s. R. Subrahmanyam &
Associates Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. 1-12012/207/2005-IR(B-1) dated 23-01-2006 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of Ind-Bank Housing Limited in dispensing with the services of Sri L. Jayakumar, Ex-Sweeper Peon is legal and justified? If not, to what relief the workman is entitled to?"

2. After the receipt of the Industrial Disputes, this Tribunal has numbered it as ID 16/2006 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations in the Claim Statement are briefly as follows :

The petitioner was engaged in the service of the Respondent Bank as a Sweeper/Peon with effect from 26-03-1991 as Temporary Sub-Staff. The Respondent Bank is a subsidiary company of Indian Bank owned and controlled by Union of India. The said Bank was constituted for the purpose of housing loans to the people. The petitioner was doing the work of sweeping the premises, cleaning the furniture etc. and also replacing the water and other things. While so, all of a sudden without any rhyme or reason the Respondent terminated the service of the petitioner on 30-04-2004. The Respondent has not given any notice of termination nor compensation. The petitioner came to know that the Respondent has created certain documents as if the petitioner was employed through Contractor. The alleged contract is sham and nominal and it is nothing but a make belief affair. The petitioner was directly engaged by the Respondent and he was under the control of the Respondent alone. Therefore, the petitioner raised a dispute before the labour authorities and after its failure of

conciliation the Government has referred the dispute to this Tribunal for adjudication. Hence, the petitioner prays that an award may be passed to reinstate him in service with consequential relief.

4. As against the Respondent in his Counter Statement contended that the petitioner is not an employee under the Respondent as there is no relationship of employer-employee. The petitioner has no locus-standi to maintain this dispute. This Respondent has not made any appointment for carrying out sweeping/cleaning jobs. This Respondent has not employed the petitioner either as a contractor or as an employee. Since, there is no relationship of employer and employee, the question of either retrenching or compliance of Section-25(F) does not arise. Due to persistent losses, this Respondent has to retrench 26 permanent employees in the cadre of Assistants and the Respondent is presently on the verge of closure. Hence, he prays that this ID may be dismissed with costs.

5. Under the circumstances, the points for determination are :

- (1) Whether the action of the Respondent Management in dispensing with the services of the petitioner is legal and justified?
- (2) To what relief the petitioner is entitled to?

Point No. 1 & 2

6. At the time of enquiry, the petitioner and the Respondent filed a joint memo stating that the dispute has been settled after the petitioner has received a sum of Rs. 55,000/- as compensation in lieu of reinstatement in service and other attendant benefits and also prayed that an award may be passed recording the joint memo as settled out of Court.

7. In view of the joint memo filed by both sides, I find an award is to be passed in terms of joint memo. The ID is dismissed in terms of the joint memo. The joint memo is part of the award.

8. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th September, 2007.)

K. LAYARAMAN, Presiding Officer
नई दिल्ली, 28 अक्टूबर, 2008

का.आ. 2665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भाषा 17 के अनुसूची में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधकों के संघटन निरोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इराकुलम के पंचार (संदर्भ संख्या 09/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार का 28-8-08 को प्रकाशित हुआ था।

[सं. एल. 12012-172/2000-आई.आर. (बी-1)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 28th August, 2008

S.O. 2665.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2008) of the Central Government Industrial Tribunal-cum-Labour Court—Ernakulam as shown in the Annexure, in the Industrial dispute between the management of State Bank of India, and their workmen, which was received by the Central Government on 28-08-2008.

[No. L-12012-172/2000-IR (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. P.L. Norbert, B.A., LL.B., Presiding Officer
(Wednesday the 21st day of May 2008/31st Vaisakhi 1930)

I.D. 09/2008

(I.D.35/2001 of Industrial Tribunal, Alappuzha)

Workman : K. Sasidharan, Padijarekoyath,
Pulaharam, Thakazhi P.O.,
Vappuzha District

By Adv. Sri. A. Jayasanker.

Management : The Deputy General Manager,
State Bank of India, Zonal Office,
FMS Compound, Thiruvananthapuram.

By Adv. Sri. P.V. Surendranath

This case coming up for hearing on 19-05-2008, this Tribunal-cum-Labour Court on 21-05-2008 passed the following.

AWARD

This is a reference made under Section 10(1)(b) of Industrial Disputes Act. The reference is :

"Whether the action of the management of State Bank of India, Trivandrum in relation to their Thiruvalla branch in terminating the services of Shri K. Sasidharan, Temporary Messenger from April, 1997 is justified? If not, to what relief the workman is entitled to?"

2. The facts of the case in brief are as follows. Shri K. Sasidharan joined the service of State Bank of India as Temporary Messenger in July 1982. He worked as such till 01-04-1997. He was terminated from service on 31-03-1997. According to the workman he had put in continuous service of more than 274 days in a year. He was sponsored by Employment Exchange. He had appeared for the selection conducted by the bank and he was ranked 196th. However the bank did not absorb him despite the

fact that there were 223 vacancies of Temporary Messengers. He was terminated from service without notice or compensation. He is liable to be re-instated w.e.f. 01-04-1997.

3. According to the management the union of the workman had filed another I.D. as 100/2000 in Industrial Tribunal, Kollam wherein the present workman was amongst 84 similar workers whose cause was espoused by the union. Since the same issue is raised by the workman in the present case it is barred by principles of res-judicata. Due to urgent needs in several branches of the bank Temporary Messengers had to be engaged in leave vacancies, but purely on temporary basis. However they were demanding regular employment through their union. There was conciliation between management and the union and settlements were arrived from 1987 onwards on the issue. The last of such settlements was on 30-07-1996, as per which the panel of Temporary Messengers and Temporary Employees were kept alive only up to 31-03-1997. Though 223 candidates were selected and ranked in the list the sanctioned posts were only 214. As per government direction out of the sanctioned posts, 25% have to be taken from among general attendance. The remaining posts alone could be filled up from the panel. Before the turn of workman reached all the vacancies were filled up by candidates in higher ranks. After 31-03-1997 the list had lapsed and hence the workman was not eligible for absorption.

4. In the light of the above contentions the only point that arises for consideration is :

Is the termination legal ?

The evidence consists of the oral testimony of WW 1 and documentary evidence of Exts.W1 series and W2 on the side of the workman and MW1 and Exts.M1 to M8 on the side of the management.

5. **The Point :—** It is an admitted fact that the workman Sri K. Sasidharan worked as Temporary Messenger from July 1992 to 31-03-1997. It is also an admitted fact that in the panel selected for absorption his rank was 196th. In the panel there were 223 candidates. The sanctioned posts were 214. The bone of contention of the workman is that the management had earmarked 25 % of the posts for the full time general attendance, which is not in terms of the Bipartite Settlement. As per the settlement all the vacant posts of Temporary Messengers are to be filled up out of the select list. But according to the management out of 214 sanctioned posts as per the government order 25% had to be earmarked for full-time General Attendants like Sweepers, Farashes, Chowkidars etc. Again 4 posts were to be reserved for Scheduled Tribes and 2 posts for Physically Handicapped persons. Thus only 154 posts were available

to be filled out of the select list. When appointment orders were issued some did not turn up to join. Therefore persons next in rank were offered appointment. Thus appointment orders were issued up to 169th rank. The rank of workman was 196. Therefore he was not eligible to get appointment as regular messenger till 31-03-1997. The direction of the government, i.e., Department of Personnel & A.R.O.M.No. 42015/3/75-Estt.(C) Dated the 16th January 1976 is produced. Based on this a circular was issued by the bank dated 27-09-1990 which is also produced. As per Ext.M7 settlement dated 30-07-1996 the panel of temporary employees and daily wage employees had to be kept alive only up to March 1997 for the purpose of filling up vacancies that arose up to 31-12-1994, and after 31-03-1997 the list had to lapse. The management bank being a nationalized bank they are bound to follow the instructions of the government. In pursuance to the government order a circular was also issued by the bank. Accordingly 25% of the vacancies were set apart to general attendance. There is no dispute that 4 posts of Schedule Tribe and 2 posts of Physically Handicapped persons were also to be reserved. Remaining vacancies were only 154. The rank of worker was 196. Naturally he cannot get an appointment. The bank has not violated the terms of settlement, Ext.M7 or prior settlements Exts. M2 to M6.

6. Though the worker has a case that he has put in more than 240 days' continuous service in a year and hence is eligible for retrenchment notice and compensation, no attempts were made to substantiate the contention of continuous service of 240 days. The burden to prove it lies on the workman as rightly pointed out by the learned counsel for the management who referred to the decision of Hon'ble Supreme Court in *Manager, Reserve Bank of India vs. Mani* (2005) 5 S.C.C. 100 to support his contention. Since the workman has failed to discharge the burden he is not eligible to the benefits under Section 25F of Industrial Disputes Act.

Therefore I hold that the termination of service is legal and the bank has not violated the terms of Bipartite Settlements or any provisions of law.

In the result an award is passed finding that the action of the management in terminating the service of Sri K. Sasidharan, Temporary Messenger is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 21st day of May, 2008.

P. L. NORBERT, Presiding Officer

Appendix**Witness for the workman**

WW 1 = 25-10-2002 = Sri K. Narasimha Rao

Witness for the Management

MW 1 = 06-01-2003 = Sri G. Ramakrishna Rao

Exhibits for the workman

W 1 series = Certificates issued from time to time to the workman

W 2 = Copy of representation dated 12-1-1997 submitted by the workman to the Director, Labour, Hyderabad

Exhibits for the Management

M 1 = Copy of letter, order No. 4-1-1997 issued by the Director, Labour, Hyderabad dated 27-1-1997 regarding the removal of the 300 Employees from the State Bank of India

M 2 = Copy of order, dated 04-1-1997 issued by the Director, Labour and All India State Bank of India Staff Union on

M 3 = Copy of order, dated 04-1-1997 issued by the Managing Director, All India State Bank of India Staff Union on

M 4 = Copy of order, dated 27-1-1998 between State Bank of India and All India State Bank of India Staff Union on

M 5 = Copy of order, dated 01-11-1997 between State Bank of India and All India State Bank of India Staff Union on

M 6 = Copy of order, dated 01-11-1997 between Proceedings of the Board of Directors, State Bank of India Hyderabad, Management and All India Staff Union on

M 7 = Copy of order, dated 1-11-1997 issued by the Managing Director, All India State Bank of India Staff Union on

M 8 = Copy of a resolution on Proceedings dated 21-1-1997 before the RLCRC, Hyderabad, Management and All India State Bank of India Staff Union on